



inserted influence on the voter on the date of election; that narrow margin of only 2028 votes is occasioned in the counting process and if the petitioner's votes are fairly counted the result would be altogether different; that many ballots of the petitioner malafidely placed in the bundle of the respondents votes; that the entire process of recounting tabulation and consolidation of the result was maneuvered one. The petitioner finally prayed that election of respondent No.1/returned candidate may be declared void and fresh re-counting of the vote may kindly be ordered to be conducted. Hence, the present petition.

In response to the notice of this Court, respondent No.1 joined the proceedings on 09.10.2018, whereas the other respondents defaulted in appearing and they were proceeded against ex-parte on 09.10.2018. Respondent No.1 Naseer Ahmad filed contesting reply to the Election Petition raising preliminary objections as well as on merit inter-alia on the grounds that no verification of Election Petition was made according to Section 144(4) of the Election Act as well as according to order 6 Rule 15 CPC; that Affidavit of the petitioner does not disclose the true facts for which matter the affidavit shall be confined; that verification of affidavits of witnesses as well as documents/Annexure annexed with the Election Petition has not been made according to the provisions of law; that full particulars of the corrupt or illegal practice

have not specifically been jotted down in the petition; that copies of election petition, affidavits of the witnesses, list of witnesses and all the allied material documents have not been served to the respondents; that election petition is incompetent due to misjoinder of all the necessary parties; that principle of Approbate and Reprobate is applicable to the petitioner's case; that the petitioner has no cause of action to file the instant petition and prayer sought by the petitioner is not available.

2. Learned counsel for respondent No.1 raised preliminary objection regarding maintainability of this petition and submits that no specific particulars of any alleged corrupt or illegal practice or other illegal act alleged so committed, including names of the parties witness as well as the name of person who allegedly committed such corrupt or illegal practice or illegal act have been mentioned and no date and place of the commission of such practice or act has been described with full elaboration in the petition as prescribed under Section 144 (1) (b) of the Election Act 2017; that verification of the election petition is not made as required under Section 144 (4) of the Election Act, 2017, as such, election petition is liable to be rejected for non-compliance of mandatory provision of Sections 142, 143 and 144 of the Act *ibid*.

3. Heard. The right of association, participation in political activities to contest the election or to elect their representative

etc., are enshrined in Article 17(2) of the Constitution of Pakistan, 1973 whereby every citizen is entitled to participate or contest the Election to be a member of legislative institution subject to certain qualification prescribed under the law. It is vested jurisdiction of the parliament under Article 225 of the Constitution of Pakistan, 1973 to frame or legislate law. The Election Act, 2017 is also visualized and legislated by the parliament which prescribed an elaborate mechanism of the Election of representative of the people from grass root level upto the member of Parliament. The Election Act, 2017 is legislated by the Parliament which is a special law on the subject and it regulate the entire process of election commencing from issuance of the notification for holding of election, the process of polling, issuance of notification of the successful candidate or the final resolution of any dispute associated with the such election process. The Election Act, 2017 is a comprehensive and elaborate enactment which covers each and every aspect of the matter relating to Elections. Admittedly, the Election Act 2017 is special law and jurisdiction where under is to be exercised in its letter and spirit and it takes preference over the general law on the subject. Under the Election Act the process of Election or any ancillary matter or any illegality, irregularity illegal and corrupt practices etc., can only be challenged through presenting an election

petition before the Election Tribunal/Court according to the procedure elaborated in the Election Act. Any violation of law committed in pre poll, during the poll and post poll process can only be challenged through presenting an Election Petition as envisage in Section 139 of the Election Act, 2017 (The Act). It is worth mentioning here that two fold sanctity is attached to the election process firstly the people exercise their fundamental right of vote in favour of their best representative who represent their aspiration at the local as well as in national level secondly a legal sanctity is also attached to the official acts and to surmount the above extraordinary correctness in narration of the facts in the pleading as well as strongly corroborating material evidence is required. It is unalienable obligation of the Tribunal to strictly scrutinize the petition at the very inception as to whether it qualify the touchstone or standard prescribed by Sections 142, 143 and 144 of the Election Act, 2017 or otherwise. For ready reference, provision of relevant sections whereof are reproduced as under:-

**142. Presentation of petition.**— (1) An election petition shall be presented to the Election Tribunal within forty-five days of the publication in the official Gazette of the name of the returned candidate and shall be accompanied by a receipt showing that the petitioner has deposited at any branch of the National Bank of Pakistan or at a Government Treasury or Sub-Treasury in favour of the Commission, under the prescribed head of account, as security for the costs of the petition, such amount as may be prescribed.

(2) An election petition shall be deemed to have been presented—

(a) when delivered to the Election Tribunal appointed under section 140—

(i) by the petitioner in person; or  
(ii) by a person authorized in writing in this behalf by the petitioner; or

(b) when sent by registered post or courier service to the Election Tribunal by the petitioner.

(3) An election petition, if sent by registered post or courier service, shall be deemed to have been presented in time if it is posted or sent within the period specified in sub-section (1).

**143. Parties to the petition.**— (1) The petitioner shall join as respondents to his election petition all other contesting candidates.

(2) The Election Tribunal may direct the petitioner to join any other person as respondent against whom any specific allegation of contravention of this Act has been made.

(3) The petitioner shall serve a copy of the election petition with all annexures on each respondent, personally or by registered post or courier service, before or at the time of filing the election petition.

**144. Contents of petition.**— (1) An election petition shall contain—

(a) a precise statement of the material facts on which the petitioner relies; and

(b) full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed, including names of the parties who are alleged to have committed such corrupt or illegal practice or illegal act and the date and place of the commission of such practice or act.

(2) The following documents shall be attached with the petition—

(a) complete list of witnesses and their statements on affidavits;

(b) documentary evidence relied upon by the petitioner in support of allegations referred to in para (b);

(c) affidavit of service to the effect that a copy of the petition along with copies of all annexures, including list of witnesses, affidavits and documentary evidence, have been sent to all the respondents by registered post or courier service; and

(d) the relief claimed by the petitioner.

(3) A petitioner may claim as relief any of the following declarations—

(a) that the election of the returned candidate is void and petitioner or some other candidate has been elected; or

(b) that the election of the returned candidate is partially void and that fresh poll be ordered in one or more polling stations; or

(c) that the election as a whole is void and fresh poll be conducted in the entire constituency.

(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.”

As a legislation by reference under section 144 (4) of the Election Act, 2017 the principles of Civil Procedure Code 1908 relating to verification of the pleading are made applicable in the manner of verification prescribed in the Code of Civil Procedure, 1908 (Act V of 1908). The procedure for verification of the pleading is given in Order 6 Rule 15 CPC which is as under:-

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

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

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

The next significant document in the judicial proceeding of lis is an affidavit which legally brings sanctity to the assertion

propounded in pleadings and this material document is also required to be verified as prescribed by the law. Under Order 19 (3) CPC, the prescribed requirement of a valid affidavit which is mentioned as under:-

*3.Matters to which affidavits shall be confined (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated.*

*(2) The cost of every affidavit which shall unnecessarily set forth matter of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.*

The provision of CPC quoted hereinabove regarding the prove of the facts which are deemed to be correct according to the personal knowledge of the deponent and such pertinent fact be specified and sifted out from the pleading and information received from other sources be specified with para number that such information are correct according to belief of deponent and a very conspicuous distinction or demarcation should be made qua personal knowledge and correctness of the information according to belief. Further, Lahore High Court in its Rules & Order Vol. IV, Chapter-12, Rule 11,12, 14, 15 & 16 has laid down following prerequisites of an affidavit that:-

- i. Identification of deponent*
- ii. Particular of deponent and identified to be mentioned at the foot of the affidavit.*
- iii. Time and place of the making of the affidavit to be specified.*
- iv. Certification by Court/Magistrate/other Officer at the foot of the affidavit that such affidavit was made before him.*

- v. *Date, signature and name of the Office and designation of the Court/Magistrate/Other officer to subscribe underneath the Certification.*
- vi. *Every exhibit referred to in the affidavit to be dated and initiated by the Court/Magistrate/Other Officer.*
- vii. *Where deponent of an affidavit does not understand the contents of an affidavit, the Court/ Magistrate/ Other Officer administering Oath must read out the contents of the affidavit to such person so that he understands. Where such is the case, the Court/Magistrate/Other Officer shall note at the foot of the affidavit that the affidavit has been read out to the deponent and he understands its contents.*
- viii. *Deponent to sign/mark and verify the affidavit and the Court, Magistrate or other officer administering the oath or affirmation to the attest the affidavit.*
- ix. *Oath to be administered by the Court/ Magistrate/ Other Officer in accordance with the Indian Oath Act 1878 and affidavit to be verified by deponent and attested by Court/Magistrate/Other Officer on forms appended thereto.*

The aforementioned provision of law are made obligatory for a petitioner to fulfill the above statutory requirements which are mandatory in nature and if the said provisions of law are not complied with then penal provision of Section 145 (1) shall come into play and election petition is necessarily liable to be rejected summarily under Section 145 (1) of the Election Act which is reproduced as under:-

*“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.”*

4. Now adverting to the institution of this petition, its contents, verification of the petition, affidavits, contents of the

affidavits, attestation of affidavit of witnesses, the annexures and other document appended with this petition as well as illegal and corrupt practices as alleged in this petition. The verification of the Election Petition given at Page 16 which reads as follow:-

*Verification:*

*Verified on oath at Lahore on the 17th that the contents of para No.1 to 8 are true and correct to the best of my knowledge and belief and rest of the paras No.9 to 11 are believed to be correct.*

*Petitioner*

*Certificate*

*As per instructions, it is certified that this is first election petition before this Honourable Tribunal on behalf of the petitioner.*

*Advocate*

From the perusal of aforementioned verification it does not contain the month and year as well as the exact place at which the verification is being made on Oath rather it does not contain the name of identifier his full particular as well as his national identity card number in the verification. Further it does not contain any attestation of Oath Commissioner which is mandatory requirement in election matters as described in sub section 4 to Section 144 of the Election Act, 2017. As no verification has been made on oath which illegality in itself is fatal for the election petition. The question with regard to the verification of election petition came under judicial scrutiny and the Hon'ble Supreme Court of Pakistan in a judgment titled

Lt.Col. (Rtd.) Ghazanfar Abbas Shah Vs Mehr Khalid

Mehmood Sargana & Others (2015 SCMR 1585) has held as

under:-

*“5. With regards to verification of election petitions on oath, it is clear from the provisions of Section 55(3) of the ROPA that an election petition has to be verified in accordance with the provisions of Order 6 Rule 15, CPC which provide the basics as to how pleadings have to be verified, what shall be the contents of the verification of pleadings and how they have to be attested by the oath commissioner when read with other relevant provisions of law. 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.”*

*6. Taking into account the verification of the election petition independent of the affidavit, it has been conspicuously noticed that there is no date or place mentioned in the verification i.e. at what date and what place the verification was made by the appellant. The two stamps of the oath commissioner, Lahore Cantt, affixed at the bottom of the verification also do not postulate the date on which the verification was made by the election petitioner. Besides, it is not reflected from the verification whether the appellant was present at the time of verification before the oath commissioner because he has not been identified with reference to his national identity card, rather by some Advocate, whose name and particulars are not even mentioned on the said verification. Therefore on account of the deficiencies identified above, we hardly find the verification to be valid in terms of spirit of provisions of Section 55(3) of the ROPA and in line with the law laid down by this Court in various dicta. Resultantly, we have no hesitation to hold that the verification is not in accord with the law.”*

*“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.”*

Further, in the judgment titled Sultan Mahmood Hinjra Vs Malik Ghulam Mustafa Khar & Others (2016 SCMR 1312),

the Hon’ble Supreme Court of Pakistan held as under:-

*“....6. It would be pertinent to mention at this juncture that although the provisions relating to the verification of pleadings are generally directory in nature, the position is different in election laws by virtue of Section 63 of the ROPA, 1976 which casts upon the Tribunal a duty to dismiss the election petition if the provisions of Sections 54 or 55 of the ROPA, 1976 have not been complied with, as such its compliance has been held to be mandatory in nature by virtue of the penal consequences prescribed under Section 63 of the ROPA, 1976.”*

*8. This Court in a chain of judgments has addressed the issue of verification of pleadings wherefrom reproducing the relevant portions would be beneficial here. In the case of Zia ur Rehman Vs. Syed Ahmed Hussain and others (2014 SCMR 1015) it has been held as under:-*

*“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 consequences 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. The effect of non-compliance of section 55 of the Representation of the People Act, 1976 came up for consideration before this Court in Iqbal Zafar Jhagra v. Khalilur Rehman (2000 SCMR 250) wherein at page 290 it was candidly held that “the verification of pleadings has been provided under Order VI,. Rule 15, C.P.C. which when read with section 39, C.P.C., clearly shows that the pleadings are to be verified on oath and the oath is to be administered by a person, who is duly authorized in*

*that behalf. It is an admitted position that the petition filed by Syued Iftikhar Hussain Gilani though mentions that it is on oath, the oath was neither verified nor attested by a person authorized to administer oath and as such it could not be said that requirements of section 36 of the Act were complied with. We have considered the reasons given by the learned Tribunal in holding that the petition filed by Syed Iftikhar Hussain Gillani did not comply the provisions of section 36 of the Act and are of the view that these reasons do not suffer from any legal infirmity.”*

*And in the case of Sardarzada Zafar Abbas and others v. Syed Hassan Murtaza and others (PLD 2005 SC 600), this Court has laid the following guidelines:-*

*“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.”*

5. As far as the question with regard to proper filing of the affidavits, the procedure provide in Order 19 Rule 3 CPC as

well as High Court Rules and Order Chapter 12 Vol. IV, Rules 11, 12, 14, 15 & 16 are to be complied with and the affidavits shall contain such qualification as enunciated in afore-quoted rules whereas the affidavit attached with the instant petition does not make distinction between the correctness of fact according to the personal knowledge of deponent or the correctness of information according to believe of the deponent by making specific reference to the paragraphs, whereas the verification and identification of the deponent are also lacking which show that affidavits were not sworn as per law. The requirement of valid affidavits has also been discussed by the Hon'ble Supreme Court of Pakistan in a judgment titled Lt.Col. (Rtd.) Ghazanfar Abbas Shah Vs Mehr Khalid Mehmood Sargana & Others (supra) held as under:-

*“7. We shall now turn to the second limb of the proposition i.e. whether the affidavit enclosed with the election petition was sufficient for establishing that the election petition has been duly verified in accordance with law or not. For this purpose, so as to determine the prerequisites of a valid affidavit, the provisions of High Court Rule and Orders, Chapter No.12, Volume No.IV, Rules No.11, 12, 14, 15 and 16 are reproduced below:-*

*“11. Identification of deponent. Every person making an affidavit shall, if not personally known to the Court, Magistrate or other officer appointed to administer the oath or affirmation, be identified to such Court, Magistrate or officer by some person known to him; and such Court, Magistrate or officer shall specify at the foot of the affidavit, the same and description of the person by whom the identification is made, as well as the time and place of the making of the affidavit.*

*12. Mode of attestation. The Court, Magistrate, or other officer as aforesaid, before whom an affidavit is made, shall certify at the foot of the affidavit the fact of the making of such affidavit before him, and*

*shall enter the date and subscribe his signature to such certificate, and shall, for the purpose of identification, mark date, and initial every exhibit referred to in the affidavit. The name of the verifying authority must be signed in full, and care must be taken that his proper designation as a Civil Court or Magistrate is added.*

*14. Attesting Officer's duty. If any person making an affidavit appears to the Court, Magistrate or other officer administering the oath or affirmation, to be ignorant of the language in which it is written, or to be illiterate, or not fully to understand the contents of the affidavit, such Court, Magistrate or officer shall cause the affidavit to be read and explained to him in a language which both he and such Court, Magistrate or officer understand; either doing so himself, or causing another person to do so in his presence. When an affidavit is read and explained as herein provided, such Court, Magistrate or other officer as aforesaid shall certify in writing at the foot of the affidavit that it has been so read and explained, and that the declarant seemed perfectly to understand the same at the time of making it.*

*15. Attesting, signing and verification or affidavit. Every affidavit shall be signed or marked and verified at foot by the declarant and attested by the Court, Magistrate or other officer administering the oath or affirmation, the verification, by the declarant shall be in one of the forms attached thereto, and shall be signed or marked by the declarant. The attestation of the Court, Magistrate or other officer administering the oath or affirmation shall also be in the form prescribed below.*

*16. Manner of administering oath to deponent. In administering an oath or affirmation to the declarant in the case of any affidavit under the Code of Civil Procedure, the Court, Magistrate or other officer appointed in that behalf shall be guided by the rules under the Indian Oaths Act, 1878, printed in Part A of this Chapter and shall follow the form of verification by oath or affirmation thereto appended.*

**I-FORM OF VERIFICATION OF OATH OR AFFIRMATION**

*(Vide paragraph 15 above)*

*Oath.*

*I solemnly swear that this may declaration is true, that it conceals nothing, and that no part of it is false ..... so help me God.*

*Affirmation.*

*I solemnly affirm that this my declaration is true, that it conceals nothing, and that no part of it is false.*

**II-FORM OF CERTIFICATE**

*(vide paragraph 12, 14 and /5 above)*

*Certified that the above was declared on ..... (here enter oath)/affirmation as the case may be) before me this ..... (date) day of ..... (month) ..... (of 19 , at ..... (place) in the district of (name of district) ..... by ..... (full name and description of declarant) who is ..... here enter “personally known to me” or identified at (time and place of identification) by (full name and descriptor: of person marking the identification), who is personally known to me”.*

*(Full Signature) A. B.*

*(Officer) District Judge (or as the case may be) of*

**II-A**

*The exhibits marked A, B, C (as the case may be) above referred to are annexed hereto under this date and my initials. Certified further that this affidavit has been read and explained to (name) ..... the declarant who seemed perfectly to understand the same at the time of making thereof.”*

*From the High Court Rules and Orders reproduced in the preceding para, it is clear to our mind that an affidavit has to meet the following requisites:*

- 1. Identification of deponent (Rule 11)*
- 2. Particulars of deponent and identifier to be mentioned at the foot of the affidavit (Rule 11)*
- 3. Time and place of the making of the affidavit to be specified (Rule 11)*
- 4. Certification by Court/Magistrate/Other Officer at the foot of the affidavit that such affidavit was made before him (Rule 12)*
- 5. Date, Signature and name of office and designation of the Court/Magistrate/Other Officer to be subscribed underneath the Certification (Rule 12)*
- 6. Every exhibit referred to in the affidavit to be dated and initialed by the Court/Magistrate/Other Officer (Rule 12)*

7. Where deponent of an affidavit does not understand the contents of an affidavit, the Court/Magistrate/Other officer administering oath must read out the contents of an affidavit to such person so that he understands. Where such is the case, the Court/Magistrate/Other officer shall note at the foot of the affidavit that the affidavit has been read out to the deponent and he understands its contents (Rule 14)

8. Deponent to sign/mark and verify the affidavit and the Court, Magistrate or other officer administering the oath or affirmation to attest the affidavit (Rule 15)

9. Oath to be administered by the Court/Magistrate/Other officer in accordance with the Indian Oaths Act, 1878 and affidavit to be verified by deponent and attested by Court/Magistrate/Other officer on forms appended thereto (Rule 16)

*The format of an affidavit is as has been mentioned in the law reproduced supra. But in the affidavit in question, it is conspicuous that the following essential elements are missing:-*

*a) date on which and the place where the verification was made, have not been specified;*

*b) no date has been mentioned on the stamp(s) of attestation fixed by the Oath Commissioner;*

*c) it has also not been mentioned that the appellant was administered oath by the Oath Commissioner before the attestation was made;*

*d) whether the appellant was duly identified before the Oath Commissioner is another important question the answer to which is also not clear from the said verification;*

*e) it does not appear from the affidavit that appellant was identified with reference to his ID card which is the ordinary, usual and general course for identification of a person or even by an Advocate; and*

*f) no ID Card Number is given; the identification does not seem to have been made; the particulars of the identifier are also conspicuously missing.*

*This affidavit, therefore, can hardly be considered to be verification of the election petition in terms of the law. To reiterate the reasons, neither have the date and place of attestation been specified nor was the appellant properly identified. With regards to what a valid affidavit should contain, we also draw*

*support from the judgment of the Lahore High Court in the case reported as Bashir Ahmed Vs. Abdul Wahid (PLD 1995 Lahore 98), which in our view is good law. The relevant portion of the said judgment reads as follows:-*

*“ The main requirements of the affidavit according to the High Court (Lahore) Rules and Orders, Volume IV, Part B, Chapter 12-B, Rules 8, 9, 14 and 15 are:-*

- (i) the name of the Court, title of the proceedings;*
- (ii) subject of the suit or petition;*
- (iii) name of the deponent, the date and place;*
- (iv) the affidavit is to be divided into paragraphs which shall be numbered consecutively and shall be confined to distinct portion of the subject;*
- (v) the deponent, other than the party to the suit, shall be described in such a manner as would serve to identify him clearly i.e. full name, father’s name, profession or trade and place of his residence;*
- (vi) the declarant in affidavit while referring the facts within his knowledge must do so directly and positively using the words ‘I affirm’ or ‘I make oath and say’;*
- (vii) when making reference as to the information obtained from others, the declarant must use the expression ‘I am informed’, and should add ‘and verily believe it to be true’, or he may state the source from which he received such information. Every affidavit shall be signed or thumb-marked; and*
- (viii) it shall be verified in accordance with the verification in the form given in Rule 16 of the High Court (Lahore) Rules and Orders. The verification shall be signed and thumb-marked by the declaration. The affidavit shall be attested by the Oath Commissioner. One can divide the affidavit into following three parts in accordance with the above requirements:-*

*1) name of the Court, title and subject of the proceedings and name etc. of the deponent;*

*2) declaration of facts sought to be proved by the affidavit duly signed by the declarant; and*

*3) verification duly signed by the deponent and attested by the Oath Commissioner.”*

*This affidavit, even if considered to be verification of the election petition in terms of the Sardarzada Zafar Abbas supra, as mentioned earlier, can*

*hardly be held to be proper verification. It may be pertinent to mention here, that neither does the affidavit in the instant case fulfill the requirements in the High Court Rules and Orders supra nor does it meet the essentials laid out in the judgment reported as Bashir Ahmad supra. We, therefore, are of the candid view that the affidavit in question is a flawed one.”*

In the case reported as Sultan Mahmood Hinjra Vs Malik Ghulam Mustafa Khar & Others (2016 SCMR 1312) the Hon’ble Supreme Court has observed as under:-

*“When the affidavit at hand is examined in the light of the above it transpires that certain essential requirements are missing therefrom. Firstly, it has not been mentioned whether the Respondent No.1 was administered oath by the Oath Commissioner before the attestation was made. Secondly, it has not been specified whether the Respondent No.1 was duly identified before the Oath Commissioner. In this regard, it has simply been stated at the foot of the affidavit that the Respondent No.1 was present before the Oath Commissioner in person, however, the details of the person identifying the Respondent No.1 have not been mentioned whereas according to the above quoted provisions, the Oath Commissioner is bound to specify at the foot of the affidavit the name and description of the person by whom identification of the deponent was made and in this regard a certificate has to be appended. Furthermore, it is also not clear from the affidavit that the Respondent No.1 was identified with reference to his ID card and in this regard, no ID card number is given, as such the identification does not seem to have been made. There is yet, another aspect to the matter. The affidavit in question does not make any reference to the numbered paragraphs contained therein which the Respondent No.1 verifies on his own knowledge and what he verifies upon information received and believed to be true. Further, the affidavit in question also does not make any reference to the verification of the annexures appended along with the petition, which although have been mentioned in the said affidavit.”*

The similar view regarding requirement of verification of an affidavit has been followed by this Court in the cases reported as Manzoor & Company and Another Vs Malik Muhammad

*Hanif* (PLD 1995 Lahore 95), *Bashir Ahmed Vs Abdul Wahid* (PLD 1995 Lahore 98) & *Lt. Col. (Retd.) J. Abel Vs Emmanuel Zafar & Others* (1987 MLD 1372).

6. It is argued by the learned counsel for the petitioner that once a notice is issued to the respondent in the election petition whereafter it cannot be rejected as evinces from the provisions of Section 145(2) of the Election Act, 2017 suffice it to say that Tribunal is undoubtedly under legal obligation to apply a stringent consideration to the pleadings (plaint) as elaborated in Sections 142, 143 and 144 of the Election Act, 2017 but if a notice is issued to the respondents it does not preclude the Tribunal to subsequently determine the question of maintainability of the petition, as the such kind of assertion cannot take away the fundamental right of audience of an adverse party guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 to raise the preliminary objection regarding the deficiencies infirmities or illegalities, irregularities and maintainability of the petition. Further, if an objection is raised with regard to the maintainability of the petition for non-compliance of mandatory provision of law, the Court/Tribunal is under unalienable legal obligation to decide the raised preliminary objection before entering into field of disputed facts and recording of evidence because if in the opinion or conclusion of Court the objection is liable to be

sustained then the Court is left with no option but to reject the petition as observed by the Hon'ble Apex Court in a case reported as Zia Ur Rehman Vs Syed Ahmed Hussain & Others (2014 SCMR 1015) held as under:-

*“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 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.”*

Further, in a recent judgment titled Sultan Mahmood Hinjra Vs Malik Ghulam Mustafa Khar & Others (2016 SCMR 1312), the Hon'ble Supreme Court of Pakistan held as under:-

*“10. In conclusion to our discussion we are of the opinion that when an objection with regard to the maintainability of an election petition for non-compliance of a mandatory provision is raised then the Tribunal should decide that very objection first because if such objection sustained then the Tribunal left with no option but to dismiss the election petition. Mentioning the case of Zia ur Rehman (supra) would again be beneficial here wherein it has been held as under:-*

*“7. .... 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 another case reported as Malik Umar Aslam Vs Sumera Malik & Another (PLD 2007 SC 362), the Hon'ble Supreme Court of Pakistan has declared that it is duty of the court to ensure compliance of mandatory provisions of law and any

non-compliance of such mandatory provisions invoke the imposition of penal provision of law as held hereunder:-

*“The Court is always empowered to ensure that the law under which proceedings have been initiated before it stands complied with fully particularly in the cases where non-compliance of mandatory provision prescribes a penalty.”*

The Hon’ble Supreme Court of Pakistan in a case titled Hina Manzoor Vs Malik Ibrar Ahmed & Others (PLD 2015 SC 396)

held as under:-

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

7. As per Section 144 (1) (b) of the Election Act, 2017 full particulars of any corrupt or illegal practice or other allegedly committed illegal act, including names of the persons who alleged to have committed such corrupt or illegal practice or illegal act as well as the date, time and place of the commission of such practice or act shall mandatorily be specifically mentioned in the election petition but no such definite material illegalities or corrupt practice or acts are mentioned in the

instant election petition, which is clear noncompliance of the aforesaid provisions of law and such deficiencies are considered enough for displacing superstructure of propounded assertion in the petition. Reliance is placed on the case reported as Usman Dar & Others Vs Khawaja Muhammad Asif & Others (2017 SCMR 292) wherein the Hon'ble Apex Court held as under:-

*“17. We have gone through the contents of the election petition as well as the affidavits of PWs. 1 to 10 in light of the requirements, inter alia, of section 55 ibid. We find that the petition read with the statements of witnesses did not fulfill the mandatory requirements of section 55 of ROPA, in so far as it failed to give detailed and complete particulars of the alleged corrupt or illegal practices or other illegal acts alleged to have been committed by the respondent No.1. Further, a full statement of the names of the persons accused of corrupt or illegal practices or illegal acts, and the date and place of commission of such acts or practices are not available on record. We have also found that the affidavits of all 10 witnesses are almost completely identical, in that only the names of the deponents vary between them. We find it untenable that the sequence of events at nine different polling stations was exactly the same, down to the small details. In addition, the allegations are vague, generalized and non-specific, and do not meet the requirements specified in section 55 of the ROPA. Reference may be made to Muhammad Saeed v. Election Petitions Tribunal, West Pakistan, etc. (PLD 1957 SC (Pak) 91) wherein it was held that, "The law relating to the trial of elections petition, though volumes have been written on it, in so far as it is relevant to the present case, is so simple that it can be summed up in one sentence, namely, where an election is sought to be set aside on the ground of commission of corrupt practices, the party challenging its validity must specify in the petition the corrupt practices committed, giving in the list attached to the petition or in his statement before the settlement of issues full particulars of those corrupt practices; that no fresh charge or instance of a corrupt practice can be added at the trial, that the burden of proof of corrupt practices is on the petitioner; that the evidence in proof of such practices must be restricted to the charges or instances mentioned in*

*the petition and the particulars; that each ingredient of a corrupt practice so charged must be affirmatively proved by evidence, direct or circumstantial; and that where the evidence is wholly circumstantial, the commissioners before finding a corrupt practice proved must exclude all reasonable hypotheses which are consistent with that corrupt practice having not been committed". Reference may also be made to the case of Hafeezuddin V. Abdul Razzaq (PLD 2016 Supreme Court 79) in which this Court held that, 'Before we embark upon an analysis of the evidence and a determination about the correctness or otherwise of the findings of the learned Tribunal, it is pertinent to mention that the rules of proof for the grounds challenging the election which are founded on corrupt and illegal practices are quite strict and stringent and the allegations in this regard must be absolutely proved through positive evidence without accepting any inferences and if there is any doubt, the benefit must go to the person against whom corrupt or illegal practices are being alleged, as held by this Court in the cases reported as Muhammad Saeed and 4 others v. (1) Election Petitions Tribunal, West Pakistan, (2) Mehr Muhammad Arif Khan, (3) Ghulam Haider and (4) West Pakistan Government and others PLD 1957 SC (Pak.) 91; Mian Jamal Shah v. (1) The Member Election Commission, Government of Pakistan, Lahore, (2) The Returning Officer, Constituency of the National Assembly of Pakistan NO.NW-II, Peshawar II, and (3) Khan Nasrullah Khan (PLD 1966 SC 1); Khan Muhammad Yusuf Khan Khattak V. S. M. Ayub and 2 others (PLD 1973 SC 160)".*

This arguments of the learned counsel for the petitioner that as a substantial compliance of the mandatory provisions of law has been made and only inconsequential nature of technical deficiencies, if any, are available in petition the same can be removed subsequently as envisages in Rule 140 of the Elections Rules, 2017. He has reiterated that had the office raised any objection regarding non-verification of the petition on oath at the relevant time of presentation of the petition, the issue of verification can be meted out so that the matter could be

decided on merit suffice it to say in this regard that every litigant is under obligation to comply with the plain provisions of law and mere posing of being a layman regarding the provisions of law is no excuse and it is the petitioner who has to bring his grievances according to the provisions of law and ignorance of law is no good ground to deviate from mandatory modus operandi elaborated in the statutory provisions of the Act. An elaborate procedure has been provided in Election Act according to which the petition shall contain the specific allegation with exact time place, day, date, name of the witnesses as well as particulars of the person who allegedly committed corrupt practices, illegal act as well as any accomplice of such illegal act must be described in the petition. Mere general nature of allegation regarding the corrupt practice would be tantamount to the non-compliance of the mandatory provisions of law. From perusal of the petition as well as the affidavits of witnesses and other documents it reveal that no such specific attribution of illegal act and corrupt practice with exact day, date, time, place has been jotted down and name of the witnesses of such illegal act or corrupt practice has also not been disclosed in the petition which is conspicuous non-compliance of law. Further it was a mandatory obligation saddled upon the petitioner that the petition must be verified on

oath as prescribed in order VI Rule 15 CPC and any deviation whereof shall entail the summary rejection of the petition under Section 145(1) of the Election Act, 2017. From perusal of the election petition it reveals that no such specific particulars are mentioned in it which is conspicuous non-compliance of the provisions of Sections 142, 143 and 144 of the Act *ibid*, Order 6 Rule 15 as well as the provision of Order 19 Rule 3 and High Court Rules and Order Vol. IV, Chapter-12, Rule 11, 12, 14, 15 & 16. Moreover, the election petition has not been verified on oath as it does found verified by the Oath Commissioner or by the other competent person so designated in this behalf and such incurable flaws are considered fatal for the maintainability of this election petition.

8. In view of the above discussion, the instant election petition is not maintainable and same is hereby ***rejected*** under Section 145(1) of the Election Act, 2017 for non-compliance of the mandatory provisions of law.

**(CH. MUHAMMAD IQBAL)**  
**JUDGE**

Announced in open Court on 10.01.2019.

**JUDGE**

Approved for reporting

**JUDGE**