

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Raja Saeed Akram Khan, J.

Civil Appeal No.91 of 2017
(Filed on 08.04.2017)

Ch. Anwar-ul-Haq s/o Sohbat Ali, candidate
Assembly, LA-7, Bhimber City, Ward No.3.

....APPELLANT

VERSUS

1. Ch. Tariq Farooq s/o Haji Muhammad Yousaf, r/o Ward No.3, Bhimber City, MLA, AJ&K Member Legislative Assembly.
2. Ch. Inam ul Haq s/o Ch. Sohbat Ai, r/o Zamindara House, Ward No.3, Bhimber City.
3. Raja Azhar Iqbal s/o Raja Jamroz Khan, r/o Sher Channi Pir Taj Din, Tehsil and District Bhimber.
4. Muhammad Imtiaz Khan s/o Muhammad Azam Khan, r/o Channi Kanjal Panjeri, Tehsil and District Bhimber.

5. Muhammad Taimoor Ilyas s/o Muhammad Ilyas Khan, r/o Channi Nakkah, p/o Pnjeri, Tehsil and District Bhimber.
6. Riaz Ahmed s/o Mirza Abdul Karim, r/o Ward No.3, Bhimber City.
7. Raja Muhammad Rafique s/o Raja Nawab Khan, r/o Bharing, Tehsil and District Bhimber.
8. Ch. Muhammad Saeed s/o Khadim Hussain, r/o Ward No.2, Bhimber City.
9. Abid Zubair s/o Allah Ditta, r/o Bhimber City, Tehsil and District Bhimber.
10. Muhammad Arif Sarfraz s/o Ch. Sarfraz, r/o Pindi, Tehsil and District Bhimber.
11. Ch. Qayyum Yousaf s/o Muhammad Yousaf, r/o Darain, Tehsil and District Bhimber.
12. Muhammad Mustafa s/o Muhammad Hussain, r/o Phayari Kasguma, Tehsil and District Bhimber.
13. Raja Mazhar Iqbal s/o Raja Muhammad Iqbal, r/o Ward No.2, Bhimber City.
14. Ch. Muhammad Najeeb s/o Ch. Noor Alam, r/o Ward No.1, Bhimber City.

.....RESPONDENTS

(On appeal from the order of the Election Tribunal dated 14.03.2017 in Election Petition No.03 of 2017)

FOR THE APPELLANT: Mr. Mushtaq Ahmed Janjua, Advocate.

FOR RESPONDENT NO.1: Raja Muhammad Hanif Khan, Advocate.

Date of hearing: 31.10.2017

JUDGMENT:

Raja Saeed Akram Khan, J.— The titled appeal has been addressed against the order passed by the Election Tribunal of Azad Jammu & Kashmir dated 14th March, 2017, whereby, the election petition filed by the appellant, herein, has been dismissed.

2. The facts necessary for disposal of the instant appeal are that the parties, herein, contested the elections of the AJ&K Legislative Assembly for constituency No.LA-07 Bhimber-III, in the General Elections, held on

21.07.2016. Respondent No.1, herein, was declared as returned candidate. The appellant, herein, challenged the said notification by filing election petition before the Chief Election Commissioner, which was entrusted to the Election Tribunal. It was averred in the petition that respondent No.1, herein, is not qualified to be elected as Member Legislative Assembly (MLA) as he, himself and his dependants had illegally got the medicines from District Head Quarter Hospital, Bhimber through G.S. and Zakat Funds in the year 2006 to 2010. Moreover, respondent No.1 recovered an amount of Rs.13,38,000/- without any justification for treatment of his son from the Zakat Profit Fund and on the allegation of the illegal act, was arrested by the Ehtesab Bureau and got released after depositing the said amount. It was further averred that respondent No.1 has received huge amounts

from Kashmir Council for Bogus schemes and delivered the amount as a political bribe amount to the voters of polling stations No. 1 to 4, 7 to 10, 14 to 42, 51 to 66, 70 to 94, 103 to 106, 118, 119, 127 to 146, 152 and 153 and purchased the votes. In this way, respondent No.1 is not qualified to be elected as MLA, due to non-fulfilment of the condition imposed section 51(1) of the Election Ordinance. It was prayed that the notification dated 22.07.2016 to the extent of respondent No.1, herein, may kindly be cancelled and the appellant may be declared as returned candidate. The learned Election Tribunal dismissed the election petition filed by the appellant, herein, vide impugned order dated 14.03.2017, hence, this appeal.

3. Mr. Mushtaq Ahmed Janjua, Advocate, the learned counsel for the appellant argued that the impugned order is

patently illegal and based on non-adherence of the relevant provisions of law which is not sustainable in the eye of law. He submitted that the learned Election Tribunal while dismissing the election petition has not taken into consideration that the election petition had duly been verified and a separate affidavit in support of the contents of the petition had also been filed. He added that it is not mandatory to write the word 'oath' while verifying the election petition and the separate affidavit fulfilled the requirement of the relevant provisions of law. He strongly argued that non-mentioning of the word 'oath' can be treated as irregularity, which is curable and not an illegality. While relying upon the case law reported as *Ch. Muhammad Aziz v. Raja Faisal Mumtaz Rathore and 15 others* [2015 SCR 159], he submitted that the proposition involved in the matter in hand has already

been settled by this Court in the referred case law but the learned Tribunal failed to appreciate the law laid down by this Court. He lastly submitted that the learned Election Tribunal without appreciating the record of the case recorded the findings that the appellant has not specifically mentioned the full particulars of any corrupt practice or illegal act of respondent No.1, therefore, the election petition is also hit by the provisions of section 51(1) of the Elections Ordinance, 1970. The learned counsel for the appellant referred to and relied upon the case reported as *Abdul Razzaq v. Syed Hafeez-ud-Din and others* [2013 YLR 2471].

4. On the other hand, Raja Muhammad Hanif Khan, Advocate, the learned counsel for respondent No.1, herein, strongly controverted the arguments advanced by the learned counsel for the appellant. He submitted that

the impugned order is perfect and legal which is not open for interference by this Court. He contended that the verification on oath is mandatory requirement of law which cannot be treated as an irregularity. He added that the election petition filed in deviation of the relevant provisions of law was not competent which has rightly been dismissed by the Election Tribunal. In continuation of the arguments, he submitted that admittedly the verification has not been made on oath, therefore, sheer violation of the mandatory provision of law was committed which is an illegality. He lastly submitted that the learned Election Tribunal after taking into consideration the law laid down by this Court has passed the impugned order and the argument of the learned counsel for the appellant in this regard is ill-founded. He relied upon the case law reported as *Ch. Muhammad*

Aziz v. Raja Faisal Mumtaz Rathore and 15 others [2015 SCR 159] and *Malik Umar Aslam v. Sumera Malik and another* [PLD 2007 SC 362].

5. We have heard the arguments of the learned counsel for the parties and gone through the record along with the impugned order. From the perusal of the impugned order it appears that the learned Election Tribunal dismissed the election petition on two grounds; i.e. (i) the petition has not been verified as per requirement of section 51(3) of the Azad Jammu and Kashmir Legislative Assembly (Elections) Ordinance, 1970 (hereinafter to be referred as Elections Ordinance, 1970) read with Order VI Rule 15 CPC; and (ii) that the appellant-petitioner, therein, has not specifically mentioned the full particulars of any corrupt practice or illegal act as envisaged in section 51(1) of the Elections

Ordinance, 1970. The learned counsel for the appellant during the course of arguments forcefully agitated the point that by submitting separate affidavit in support of the contents of election petition the requirement of verification of petition on oath, as provided under the provisions of section 51(3) of Elections Ordinance, 1970 read with Order VI Rule 15 CPC, has been fulfilled, therefore, the Election Tribunal was not justified to dismiss the election petition on the ground that the petition has not been verified on oath. To appreciate the contention of the learned counsel for the appellant, we have examined the relevant provisions of law i.e., Order VI, Rule 15 of the Civil Procedure Code and section 51(3) of Elections Ordinance, 1970. As the learned Election Tribunal has already reproduced the aforesaid provisions of law in the impugned order; therefore, there is no

need to reproduce the same again. After going through the same it appears that unambiguous language has been used that every pleadings shall be verified on oath of solemn affirmation at foot; the person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verified upon information received and believed to be true and the verification shall be signed by the person making it; but in the instant matter such verification is missing. It is settled principle of interpretation of statute that law has to be interpreted as it is and not ought to be and the Courts are bound to follow the intention of legislature and prohibited to interpret law in the manner contrary to the intention of the legislature. Here we would like to observe that verification on oath and filing of affidavit are two distinct requirements of

law which cannot be amalgamated with each other and an affidavit cannot substitute the mandatory requirement of verification on oath. Our this view finds support from the case law reported as *Sardar Muhammad Hussain v. Election Tribunal & others* [2015 SCR 75], wherein it has been held that:-

“10. While attending the point of verification of election petition it may be stated that the verification of the petition is mandatory under law and the affidavit cannot be treated as substitution for the verification of the petition. This fact has also admitted by the learned counsel for the appellant before this Court, however, he submitted that affidavit was duly verified.....”

It may also be observed here that although in civil suits the defective verification cannot be made a ground for rejection of plaint;

however, in the election petition the omission to verify or defective verification is fatal under the provisions of Elections Ordinance, 1970. The learned counsel for respondent No.1 has rightly relied upon the case law reported as *Malik Umar Aslam v. Sumera Malik and another* [PLD 2007 SC 362], wherein it has been held that:-

“5. We have heard parties’ counsel at length and have also taken into consideration the material so made available on record. A perusal of the Scheme of the Act, 1976 relating to filing of Election Petition under Chapter VII reveals that the lawgivers, to ensure expeditious decision of election disputes, has authorized the Election Tribunal to regularize the proceedings itself, instead of following the technicalities of C.P.C. except application of some provisions specifically made

applicable for limited purposes. Under section 55(3) of the Act, 1976, it has been made obligatory upon the person, who has challenged the Elections, to verify the same in the manner prescribed for verification of plaint by C.P.C., thus by reference, the provisions of Order VI, Rule 15, C.P.C. have been made applicable. As per its provisions, every pleading is required to be verified on oath or solemn affirmation at the foot by the party or by one of the parties to pleadings or by some other person to the satisfaction of the Court acquainted with the facts of the case. It may not be out of context to note that the verification of the pleadings on oath was introduced by the Law Reforms Ordinance (XII of 1972) read with section 6 of the Oaths Act, 1873, by adding the words "on oath or solemn affirmation" after the word verified in Rule 15(i) of Order VI, C.P.C. It

is also pertinent to note that after the said importance of the same amendment in presence of verified pleadings on oath, the Court has been empowered to proceed case ex parte against the opponents and pass a decree, under Order IX, Rule 6(1), C.P.C. without calling for an affidavit in ex parte proof. We believe that there is no point to address ourselves on this question namely if verification on oath has not been made before the person authorized to administer the oath, the same would not be considered to be valid verification because for the purpose of taking oath one has to bind down himself to speak the truth otherwise he or she would be liable for the course of Almighty Allah if the truth is not spoken. Under section 6 of the Oath Act, 1873, the procedure has been prescribed for taking the oath duly attested by an authorized person. Admittedly in the instant case,

verification has not made on oath before an authorized person, therefore, the appellant, on realizing the major defect in the Election Petition, submitted an application seeking amendment in the petition, to the extent of verifying it on oath, accordingly.

6. On our query, learned counsel appearing for appellant stated that without prejudice to his above argument such application was moved on behalf of appellant by way of abundant caution. Be that as it may, we are of the considered opinion that as per admitted position the oath has not been administered to appellant by a person authorized to do so, as per requirement of Order VI Rule 15 read with section 139, C.P.C. Thus, the pleadings shall be deemed not duly verified on oath."

6. In the case in hand, admittedly the election petition has been filed without fulfilling

the mandatory requirement of law, i.e. verification on oath. The learned Tribunal after appreciating and relying upon the law laid down by this Court in the cases reported as *Ch. Muhammad Aziz v. Raja Faisal Mumtaz Rathore and 15 others* [2015 SCR 159] and *Sardar Muhammad Hussain v. Election Tribunal & others* [2015 SCR 75] has passed the impugned order, therefore, the argument of the learned counsel for the appellant that the learned Tribunal has not considered the law laid down by this Court, is ill founded. The learned counsel for the appellant mostly relied upon *Ch. Muhammad Aziz's* case (supra), however, the proposition involved in that case was quite different as the point under consideration in that case was whether if any interim order is passed during the pendency of election petition the same can be assailed by way of writ petition or not. Thus, the referred

case law is not applicable in the case in hand. In *Sardar Muhammad Hussain's* case (supra), this Court placed reliance on the judgment of the apex Court of Pakistan reported as *Lt. Col. (Rtd.) Ghazanfar Abbas Shah v. Mehr Khalid Mehmood Sargana* [2015 SCMR 1585], wherein while dealing with the same proposition it has been held that:

“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.....

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.”

After going through the record of the case, relevant provisions of law and the law laid down by this Court as well as the apex Court of Pakistan, we are of the unanimous view that the election petition was incompetently filed as the same has not been verified as per requirement of law. Thus, in such scenario, we do not intend to dilate upon the other point involved in the matter, i.e. whether the election petition is also hit by the provisions of section 51(1) of the Elections Ordinance, 1970 or not, mere for an academic discussion.

In the light of the above discussion, this appeal finding no substance is hereby dismissed. No order as to costs.

Muzaffarabad, **JUDGE** **CHIEF JUSTICE**
____.11.2017

Date of announcement: 7.11.2017