
Verification of Election Petition





RESEARCH CENTER, HIGH COURT OF BALUCHISTAN

COURT: MR. JUSTICE HON'BLE MUHAMMAD AAMIR NAWAZ RANA.

SUBJECT: ELECTION LAWS.

DATE: 4ND NOVEMBER 2024

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Query:

How have recent judicial precedents of the Apex Court clarified the legal requirements for verifying election petitions?

Verification in the context of election petitions refers to a formal, affirmation of the petition's truthfulness. The Election Act, 2017, and its predecessor, the Representation of the People Act, 1976, have emphasized specific verification requirements, which mandates verification to prevent false claims and ensure credibility in legal challenges against election outcomes. The recent legal precedents in Pakistan regarding procedural compliance in election petitions, with a focus on verification and statutory adherence under the Elections Act, 2017, and the Representation of the People Act, 1976 collectively affirm that non-compliance with statutory verification requirements constitutes a substantive flaw, often resulting in dismissal. In the following the excerpts of the recent judgements are reproduced for ease of reference:

In case **Sardar Abdul Rehman v. Abdul Kareem Khetran (2021 SCMR 82)** the Court highlighted that under the Elections Act, 2017, only the petitioner could verify the contents, not an attorney. Here, the attorney verified the petition, leading to the court's ruling of non-compliance with Section 144(4), which mandates personal verification by the petitioner. This non-compliance was deemed a fundamental flaw, resulting in dismissal. In this context the Court observed that:

"We have noticed that the respondent assigned the responsibility for institution as well as prosecution of the election petition to his confidant Sanaullah, designated as attorney; he is the person who appears to have not only presented the election petition but also verified contents as well as annexures thereof as required under section 144(4)

of the Act. While Order VI, Rules 14 and 15 of the Code generously permit the parties to sign pleadings or verification either personally or through their designated attorneys, section 144(4) ibid mandatorily restricts the petitioner to personally undertake the exercise, violation whereof, would inevitably result into summary rejection of the petition as is evident from the plain language of subsection (1) of section 148 of the Act ibid. It was incumbent upon the petitioner to follow the procedure expressly provided by the Act itself; admittedly not followed by him."

In case ***Muhammad Ibrahim Jatoi v. Aftab Shaban Mirani (2016 SCMR 722)*** the Hon'ble Supreme Court held that under Section 55 of the Representation of the People Act, 1976, the verification requirement only necessitates compliance with Order VI, Rule 15 of the Code of Civil Procedure (CPC). The appellant's claim that an affidavit was mandatory was rejected since no such requirement exists under the Act. The Court held that:

"When one looks at Section 55 of the Act, the only requirement of law is regarding verification as per the provisions of Order VI, Rule 15 of the Code of Civil Procedure, 1908 (C.P.C.) and not vis-a-vis any affidavit required to be given in support of the election petition".

In case ***Feroze Ahmed Jamali v. Masroor Ahmad Khan Jatoi (2016 SCMR 750)*** the court noted that minor lapses in verification, such as lack of specific mention of knowledge versus belief, were immaterial. The petition complied with Order VI, Rule 15, and the defect was not substantial enough to dismiss the case. Relevant Extract is as follows:

"Although the Court in Zafar Abbas (supra) held that the validity of the verification shall depend on the facts of each case, but in the instant matter we do not find the so-called lapse indicated by the learned Tribunal to be of any material consequence, warranting dismissal of the election petition on this ground simpliciter"..

In case ***Ch. Muhammad Ayaz v. Asif Mehmood (2016 SCMR 849)*** the Court emphasized that compliance with Section 55(3) of the Representation of the People Act and Order VI, Rule 15 of CPC was mandatory. Any default at the time of filing could be fatal to the petition's maintainability. In this case, failure to verify upon filing led to the dismissal of the election petition. It was noted that:

"Verification of the election petition in accordance with section 55(3) of the Representation of the People Act, 1976 was to be made at the time of filing of the election petition and any default in such regard would be considered to be a significant omission and thereby fatal".

In case ***Sultan Mahmood Hinjra v. Malik Ghulam Mustafa Khar (2016 SCMR 1312)***: The court held that the verification of an election petition under section 55(3) of the Representation of the People Act, 1976, is mandatory and must follow Order VI, Rule 15 of the Civil Procedure Code (CPC). In this case, the

petitioner's verification through an affidavit was insufficient due to missing requirements like identifying the petitioner properly, verifying specific paragraphs, and mentioning the identification number. Failure to meet these standards led to the petition's dismissal. The relevant portions is replicated as under:-

"Verification of an election petition in the prescribed manner is a mandatory requirement in accordance with the provisions of Order VI, Rule 15, C.P.C., specifying what the petitioner verifies of his knowledge and what upon information received."

In case **Muhammad Nawaz Chandio v. Muhammad Ismail Rahu (2016 SCMR 875)**: This case reiterated the necessity of verifying election petitions correctly. The petitioner verified the contents in line with Order VI, Rule 15, and entered the witness box to validate the petition. The court allowed a re-polling order based on partial verification issues only at specific polling stations. It held that:

"It bears verification on solemn affirmation... requirement of Order VI, Rule 15, C.P.C. has in essence been complied with... Court's decision based on statements of other witnesses and NADRA's report."

In case **2015 SCMR 1186 (Ch. Zawwar Hussain Warraich vs. Muhammad Aamir Iqbal)** emphasized that an affidavit filed with an election petition, properly verified and attested by an oath commissioner, constitutes sufficient compliance with verification requirements under Section 55(3) of the Representation of the People Act, 1976 (ROPA). The Court noted that there is no substantial difference between a verification made on oath at the foot of the petition and one provided via a sworn affidavit, thus setting aside the Election Tribunal's dismissal of the petition. It was observed that:

"There is no material difference between a verification on oath and a verification through an affidavit. An affidavit is a sworn statement in writing while a verification is a confirmation in law by oath... Since the affidavit had been filed along with the election petition and duly attested, there was sufficient compliance with Section 55(3) of ROPA".

In case **Lt.-Col. (Rtd.) Ghazanfar Abbas Shah vs. Mehr Khalid Mahmood Sargana (2015 SCMR 1585)** the Supreme Court held that verification of an election petition is a mandatory requirement under Section 55(3) of ROPA. It ruled that any failure in verification, such as missing dates or lacking oath administration, could result in the petition's dismissal. The judgment noted that an affidavit alone does not remedy defective verification unless all procedural requirements are met, including identification, date, and certification of oath. The Court stated that:

"An election petition not verified in accordance with Section 55(3) cannot be treated as a curable defect, and the Election Tribunal... cannot allow such a defect to be remedied post-limitation. The verification and affidavit must meet all requirements, including date, place, and proper administration of oath".

In case ***Sardar Muhammad Naseem Khan vs. Returning Officer, PP-12 (2015 SCMR 1698)*** Supreme Court ruled that an amended election petition must also comply with Section 55(3) of ROPA. The amended document must be independently verified as a separate petition. The court clarified that once an amended petition is filed, it substitutes the original petition and requires verification as a stand-alone document. The Court observed that:

"The amended petition is a separate and independent document requiring verification per Section 55(3) of ROPA. The earlier verification of the original petition cannot be relied upon; non-compliance here attracts dismissal under Section 63".

These stringent standards emphasize the importance of due process in election disputes, protecting the credibility of electoral outcomes and ensuring that only legitimate claims are entertained by the courts.

The End