

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W. P. No. 45114 / 2022

State Life Insurance Employees Cooperative Housing Society Limited.

Versus

Government of Punjab, etc

JUDGMENT

Date of Hearing:	07.11.2023
Petitioner By:	Mr. Javaid Iqbal Qureshi, Advocate
Respondents By:	Mr. Sikandar Nisar Saroya, A.A.G. alongwith Saif ur Rehman, Assistant Registrar Housing-I, Lahore. Mian Kashif Ashfaq, Advocate Mr. Jamal, Advocate The Applicant in C. M. No. 3 / 2022 in person.

ABID HUSSAIN CHATTHA, J: This constitutional Petition questions the validity of Orders dated 05.07.2022 and 18.07.2022 passed by Circle Registrar (Housing), Cooperative Societies Punjab, Lahore and Secretary Cooperatives, Government of the Punjab, respectively.

2. Precisely, State Life Insurance Employees Cooperative Housing Society Limited (the “**Petitioner-Society**”) is a membership based cooperative housing society registered under Section 10 of the Cooperative Societies Act, 1925 (the “**Act**”) read with Cooperatives Societies Rules, 1927 (the “**Rules**”) framed under Section 71 of the Act. Each of its member holds membership by way of a share purchase and is granted the right to occupy at least one plot or housing unit in the Petitioner-Society with the objective to pool the resources of the members to leverage their buying power, thus, lowering the cost per member in terms of all the facilities and services associated with ownership. The Petitioner-Society is run by its Managing Committee in accordance with its by-laws duly approved by the Registrar,

Cooperatives subject to the provisions of the Act and the Rules. The supreme authority of the Petitioner-Society in terms of Section 18-A of the Act read with its by-law 22 vests in its General Body. The Cooperatives Department of the Government of the Punjab through the Registrar and Secretary Cooperatives regulates the Petitioner-Society under the Act and the Rules.

3. The Petitioner-Society consists of two separate phases called Phase-I and Phase-II. The total number of members of Phase-I and Phase-II are statedly about 3313 and 7360, respectively. Phase-I of the Petitioner-Society is developed but Phase-II comprising of approximately 4800-Kanals could not be completely developed since 2003 as allegedly the land is not in a compact block but exists in scattered pockets. In Special General Meeting (the “SGM”) held in the year 2015-2016, it was resolved to completely develop Phase-II of the Petitioner-Society by proportionately reducing different category of plots but such efforts did not materialize. The Petitioner-Society in order to resolve the long-standing issue of non-development of Phase-II decided to place the same in its Annual General Meeting (the “AGM”) which is also a mandatory statutory obligation on yearly basis. In this context, an application seeking permission to hold the AGM on 06.03.2022 was filed before the Registrar which was allowed vide Order dated 14.02.2022. However, the said Order was challenged by some members of the Petitioner-Society including Respondent No. 6 and in consequence thereof, vide Order dated and 03.03.2022 passed by the Secretary Cooperatives, the relevant agenda items with respect to the fate of Phase-II of the Petitioner-Society were ordered to be dropped and directed to be taken up separately through the SGM primarily on the ground that the issue of non-development of plots in Phase-II is liable to be resolved separately by the members of Phase-II only. Thereafter, the Petitioner-Society, Respondent No. 6 and another filed Writ Petition Nos. 13488, 13421 and 13490 of 2022 which were dismissed by this Court by refusing to interfere in the Order dated 03.03.2022 passed by the Secretary Cooperatives.

4. Resultantly, the Petitioner-Society decided to convene the SGM on 27.03.2022 with a specific agenda to either develop Phase-II through the developer and handover the plots to its members or sell the land of Phase-II and distribute the proceeds of sale amongst the members of Phase-II. The holding of the SGM was again assailed on multiple grounds by some members of the Petitioner-Society but the Registrar allowed the convening of the SGM vide Order dated 18.03.2022. In further challenge to the said Order, the Secretary Cooperatives vide Order dated 25.03.2022 held that the proposed SGM has been convened without following specified procedure and therefore, directed that a fresh SGM be convened at a later stage after fulfilling all legal and procedural requirements. After successfully coping with aforesaid obstacles, eventually, the Petitioner-Society sought permission for holding the SGM on 24.07.2022 from the Registrar which was granted vide impugned Order dated 05.07.2022 subject to SOPs dated 27.11.2020 (the “SOPs”) and following directions issued under Section 44-D of the Act:-

- “1) *The Managing Committee of the society will devise proposals/decisions in such a way that it falls strictly under Cooperative Societies Act, 1925 and Cooperative Societies Rules, 1927 so that this office may proceed further accordingly.*
- 2) *Agenda points and proposals must be presented in a detailed, tangible and unambiguous manner, enabling the members to reach a concrete decision.*
- 3) *Quorum is fixed at 33% of total members of Phase-II. In case the presence of Phase-II members is less than 33%, the SGM shall be adjourned for maximum period of two hours. In case quorum still remains below 33%, SGM will be postponed.*
- 4) *Attendance of participants should be marked and enrolled in a transparent and verifiable manner.*
- 5) *Voting on the agenda points shall be conducted by way of clear division instead of mere show of hands.*
- 6) *The resolution(s) must be approved with 2/3rd majority of present members instead of simple majority.*

In order to monitor above referred SGM, following officers are deputed as departmental representative / observer to attend the SGM on fixed

date and time and submit report regarding its proceedings.

1. Mr. Moazzam Ali Butt, Deputy Registrar Cooperative Societies, Lahore.

2. Rana Sajid Ali, Deputy Registrar, Cooperative Societies Rawalpindi.

The proceedings of the Special General Meeting shall remain subject to final approval of this office in the light of revised SOPS for holding of SGM of Cooperative Societies in Punjab issued vide this office letter No. RCS/H/L-240/1025 dated 27.11.2020 except directions as referred above.”

(underlining is mine)

5. The Petitioner-Society being aggrieved from directions No. 3 and 6 reproduced above instituted Revision Petition before the Secretary Cooperatives, *inter alia*, on the grounds that the same are inconsistent to its by-law 23 which specifies quorum and requires decisions to be taken by simple majority of its members, present and voting. As such, the directions being inconsistent with statutory provisions and by-laws of the Petitioner-Society are arbitrary, unreasonable and capricious. However, the Revision was dismissed by the Secretary Cooperatives vide impugned Order dated 18.07.2022. Hence, this Petition.

6. The respective contentions of the parties have been heard and record perused.

7. The permission for holding the SGM was sought by the Petitioner-Society for consideration of the following agenda by the members of Phase-II of the Petitioner-Society:

Discussion and decision about fate / future of Phase-II.

(a) Discussion and decision as to whether Phase-II will be developed by the Petitioner-Society; or

(b) Plots will be developed through developer and handed over to members of Phase-II; or

(c) Auction of land of Phase-II and funds to be returned to the members.

8. This Court in exercise of its power of judicial review is called upon to examine the validity of directions No. 3 and 6 imposed by the Registrar with reference to the above agenda of the SGM in the

light of the provisions of the Act, the Rules, the by-laws of the Petitioner-Society and the SOPs. It is universally accepted and equally well entrenched in our jurisprudence that in the scheme of regulation, the provisions of law prevail in case of any inconsistency with any provision in the constituting document of a corporate body. Further, the constituting document of a corporate entity, if approved by the regulator under the law, also derives statutory recognition provided it is not inconsistent with direct statutory stipulations. This principle is reiterated in Rule 52(1) of the Rules. Similarly, the Regulator, if permitted by law can issue directions within the ambit and scope of law in discharge of duties of regulation.

9. The Act was promulgated with the objective to allow the formation, registration and regulation of cooperative societies for the promotion of thrift, self-help and mutual assistance among persons with common economic or social interests to enhance their standard of living. Like any other typical corporate structure, the Act and the Rules provide a comprehensive and complete frame-work regarding the formation, operation, regulation and winding-up of a cooperative society. The Cooperative Department of the Government of the Punjab is tasked with the regulation of cooperative societies through the office of the Registrar with some supervisory powers vested in the Secretary Cooperatives. Under Section 3(aa) read with Section 3(e) of the Act, a cooperative society and its by-laws require compulsory registration. Rule 5 of the Rules provides that the by-laws of a society submitted under Section 9(3) of the Act shall subject to any modification approved by the Registrar and adopted in the General Meeting, having a quorum, by majority of not less than two-thirds of the members present and voting at such meeting, become the by-laws of the society. Similarly, Section 16 of the Act allows for amendments in the by-laws of a society. Elaborating the process, Rule 6(2) of the Rules requires that a resolution for alteration or abrogation of the by-laws of a society is required to be passed by majority of not less than two-thirds of the members present at the general meeting at which a quorum shall be

present or, at an adjourned meeting at which quorum is not present, members present shall form the quorum. Moreover, Section 16-A of the Act also confer powers upon the Registrar to effect amendments in the by-laws of a society. Section 13 of the Act ordains that SGM may be called at any time by a majority of the members of Management Committee and shall be called within one month on the requisition in writing of one-fifth of the members of a society or at the instance of the Registrar. Section 18-A of the Act unequivocally declares that the powers and management of a society shall vest in its General Body consisting of all of its members. A society shall have a Managing Committee, constituted in accordance with its rules and the by-laws, which shall exercise such powers and functions as may be delegated to it by the General Body. Subject to any general or special order of the Government, the Registrar may, on such terms and conditions as he may deem fit, appoint not more than two experts on the Managing Committee of a society for the development and proper management of the society. Importantly, Section 18-A(4) confers a power to the Registrar to require a society to obtain approval of its General Body, in any matter concerning the business of the society, before proceeding further in the matter. Rule 6-A of the Rules provides that notwithstanding anything contained in the Rules or by-laws of a society as to the manner of summoning a General Meeting and a notice to be given, for the said purpose, any person authorized in this behalf by the Registrar may call the SGM for which a requisition has been made under Section 13(2) of the Act in such manner and at such time and place as the Registrar may direct. It further states that such a convened SGM shall have powers to transact all business which can be transacted at an AGM under the by-laws of the society and such other business as is specifically mentioned in the requisition made by the Registrar. Section 15 of the Act deals with amalgamation and division of societies which eclipses the powers of the General Body through conditions precedent of taking prior approval of the Registrar and a resolution passed by two-third majority of the members present and voting in the

AGM or the SGM. The specific obligation for adopting a resolution by two-third majority of the members present and voting in the AGM or the SGM also finds mention in some other Sections of the Act such as Section 15-A which deals with merger of a society in a company and Section 47 relating to winding up of a society. Chapter VII of the Act deals with inspection in the affairs of a society and confers broad and sweeping powers to the Registrar with respect to inquiries, inspection of books and properties, removal of officers, giving of directions, taking of special measures and redressal of grievances of members. The impugned directions have been purportedly issued by the Registrar by invoking Section 44-D of the Act which is couched in Chapter VII of the Act and is reproduced as under:-

***“44-D. Power of Registrar to give directions.** Where the Registrar is satisfied that in the public interest or to prevent the affairs of any society from being conducted in a manner detrimental to the interest of its members or depositors of the society or to secure the proper management of any society generally, it is necessary to issue directions to the societies generally or to any society in particular, it may issue necessary directions and the societies or as the case may be the society shall be bound to comply with such directions.”*

10. Conspicuously, there is no provision in the Act or the Rules specifying quorum for a society with respect to the AGM or the SGM, thus, leaving the issue of quorum to be stipulated in the by-laws of a society. Therefore, it is imperative to analyze the current applicable model by-laws of the Petitioner-Society which were adopted by the General Body of the Petitioner-Society in its AGM held on 29.01.2017 and approved by the Registrar on 29.11.2019. By-law 4(2)(iii) provides that any amendment or alteration / change in the housing scheme will be subject to the decision of General Meeting and the Registrar. In line with statutory dictates, by-law 22 proclaims that the supreme authority of the Petitioner-Society shall vest in the General Meeting. AGM shall be held between 1st July to 30th September each year and if the same is not called within the fixed time, the Registrar shall call it. SGM can be summoned at any time as prescribed in Section 13 of the Act and if summoned by the Registrar or at the written request of not less than

1/5th of the total members, it will be called within one month. By-law 23 stipulates that to decide any matter, the following quorum shall be required:

	NO. OF MEMBERS	QUORUM REQUIRED
1.	1 to 100	30%
2.	101 to 200	40 members
3.	201 to 500	20%
4.	501 to 700	100 members
5.	701 to 1000	15%
5.	1001 to 1500	150 members
7.	1501 to 2000	10%
8.	2001 and above	250 members

In case quorum of the General Meeting is not complete, the AGM will be postponed for one hour and after one hour, the AGM will again be called for which members present shall form a quorum. By-law 26 further clarifies that except otherwise provided in the Act, the Rules or the By-laws, all matters will be decided by simple majority but in case of equality, the President will have a casting vote. By-law 29 specifically deals with the amendment in the by-laws and stipulates that any amendment shall be carried out by two-third majority of the members present at a General Meeting at which a quorum shall be present or at an adjourned General Meeting in which if a quorum is not present, the members present will form the quorum. This is subject to the condition that at least 15 days of notice of the amendment is given to all the members through the press and post. It further stipulates that no amendment passed in the General Meeting will be enforceable unless it is approved and registered by the Registrar. By-law 30(10) stipulates that General Meeting is competent to consider any matter referred to it by the President or Managing Committee or the Registrar. As per by-law 34(8) read with by-law 34(1)(c), any change in allotted plots to the members or any amendment in increase or decrease in housing scheme by the Management Committee is subject to the approval of General Meeting and the Registrar. By-law 34(38) binds the Management Committee to do any other act necessary for the achievement of objects of the Petitioner-Society or required by the General Meeting or the Registrar.

11. In case titled, “Military Accounts Co-operative Housing Society Ltd. versus Secretary to the Government of the Punjab and others” (**PLD 2016 Lahore 223**), the power of the Registrar to issue directions under Section 44 of the Act were recognized with the caveat that such directions are amenable to judicial review by the Court in the light of discretionary parameters of Section 44-D of the Act vis-à-vis the express statutory commands enshrined in the Act, the Rules and the by-laws in order to draw a balance between the democratic and independent character of a cooperative society and the extent of interference into its affairs by the regulator.

12. It follows from the cumulative and conjunctive reading of the scheme of law encapsulated in the provisions of the Act, the Rules and the by-laws that vast and broad powers are conferred upon the Registrar to regulate the affairs of a cooperative society and has powers to issue specific directions in the public interest or to prevent the affairs of any society from being conducted in a manner detrimental to the interest of its members or depositors of the society or to secure the proper management of any society. Such power of the regulator is well recognized by the by-laws of the Petitioner-Society. However, it is equally well settled that such discretionary powers have to be exercised and structured within the ambit of scheme of law to advance the objectives of regulation and must not be exercised arbitrarily, unreasonably or capriciously to undermine the democratic and independent decision-making by the members of a cooperative society. It is obvious that a specific quorum has been stipulated in the by-laws of the Petitioner-Society which has been duly approved by the Registrar. All General Meetings are being conducted accordingly and as such, there was no compelling reason available to the Registrar and the Secretary Cooperatives to disregard the same and prescribe a mandatory supra-quorum requirement inconsistent with designated quorum in the by-laws undermining the democratic and independent functioning of the Petitioner-Society especially when all procedural requirements of due process for calling the SGM had been complied with by the

Petitioner-Society. The SGM as per the approval accorded by the Registrar was to be attended by the representatives of the Registrar and the decisions taken by the members was again subject to approval by the Registrar. The requirement of quorum is designated to afford regularity to a convened meeting and a fix a minimum number of members without which the business of a society cannot be conducted. There is no bar on any member to attend and participate in the SGM. However, the requirements of quorum cannot be mandatorily fixed in a manner that no business of a society can be transacted at all. By fixing 33% of the total members of Phase-II of the Petitioner-Society as quorum, the Registrar had virtually paralyzed the functioning of the Petitioner-Society as the Management Committee is only obligated to adopt due process with respect to convening of the SGM and cannot compel any member to compulsorily attend and participate in the SGM. The implication of fixing the quorum by the Registrar is that if 33% of the total members do not attend the SGM, it can never be held. In case, the Registrar was of the view that the stipulated quorum in the by-laws was inadequate, it had powers to require the Petitioner-Society to amend its by-laws but the said power was never invoked by the Registrar. It is strange to note that on the one hand, the Registrar had approved the quorum of the Petitioner-Society by approving its by-laws but on the other hand, was not ready to recognize and give effect to the same.

13. The imposition of condition of quorum is also inconsistent with condition No. 8 of the SOPs issued by the Registrar for holding the AGM / SGM of cooperative housing societies in Punjab which stipulates that quorum listed in the by-laws for holding the AGM / SGM shall be strictly observed and no deviation to this effect shall be made. By imposing the condition of quorum inconsistent with the by-law 23, the Registrar and the Secretary Cooperatives themselves violated the SOPs and issued a direction beyond their regulatory mandate conferred by the Act and the Rules, thereby, rendering the stipulated quorum in the by-laws of the Petitioner-Society as redundant

and thus, clogging the democratic and independent functioning of the Petitioner-Society. The role of the regulator is not to micro manage the affairs of the Petitioner-Society and the members are free to discuss, deliberate and take decision in their best interest. Therefore, direction No. 3 imposed by the Registrar and upheld by the Secretary Cooperatives with respect to quorum was unlawful, unreasonable, arbitrary, capricious and in colorable exercise of authority. The same is accordingly, struck down.

14. Impugned direction No. 6 required that the resolution(s) must be approved with two-third majority of members present in the SGM instead of simple majority. The consideration of agenda in the SGM included an option for auction of land of Phase-II and funds to be returned to the members. The consequences of approval of this option can virtually trigger the winding-up of Phase-II of the Petitioner-Society. As noted above, some provisions of the Act such as Sections 15, 15-A and 47 with respect to amalgamation, division, merger and winding-up of a society require a resolution to be passed by two-third majority of the members present and voting in the AGM or the SGM. Therefore, considering the nature of the business of the Petitioner-Society having a critical impact on the proprietary rights of the members, the direction of the Registrar was reasonable and justified within the scope of law and the by-laws, particularly, bylaw 26 cited above. Further, it is also observed that this particular direction of the Registrar was not specifically impugned in the Revision Petition instituted by the Petitioner-Society before the Secretary Cooperatives. Hence, no case of interference is made out with respect to direction No. 6 issued by the Registrar. Accordingly, the same is upheld.

15. In view of the above, this Petition is partially allowed; and the impugned Orders dated 05.07.2022 and 18.07.2022 are modified in the manner that condition No. 3 specifying quorum inconsistent with by-law No. 23 is struck down. The Petitioner-Society is directed to convene its SGM, if not already held, within a period of 30 days from the date of

this Order. If the SGM has taken place, the Registrar is directed to proceed further in accordance with law.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

**Ahsan*