

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Writ Petition No.2500/2019.**

Haroon Mushtaq Tarar

Versus

Chief Commissioner, Exercising Power of Secretary Cooperative Department, ICT,  
Islamabad, etc.

| S. No. of<br>order/<br>proceedings | Date of<br>order/<br>Proceedings | Order with signature of Judge and that of parties or<br>counsel where necessary. |
|------------------------------------|----------------------------------|--|
|                                    | 04.07.2019.                      | Raja Inaam Ameen Minhas, Advocate for petitioner.                                |

Through this writ petition the petitioner has challenged the election schedule dated 21.04.2019 regarding Executive Committee of Engineers Cooperative Housing Society/respondent No.4 mainly on the grounds that non-engineers members were not allowed to participate in the election process under the garb of clause 6(c) of the Bye-laws and declaration has been sought that the same is against the fundamental rights of the petitioner.

2. Learned counsel for the petitioner *inter-alia* contends that respondent No.3 is Registrar Cooperative Societies under the name and style of Engineers Cooperative Housing Society, whose election schedule was announced on 21.04.2019 by the Circle Registrar and the bye-laws of the said society provides the eligibility to its members in terms of clause 6 according to which only engineers are eligible to apply; that model bye-laws issued by the Registrar Cooperative societies have to be implemented into letter & spirit and the

clause which bars the individuals/allottees including petitioner from participation in the election process is contrary to the fundamental rights and is liable to be struck down.

3. Arguments heard, record perused.

4. Perusal of record reveals that respondent No.4 has been established by different individuals under the bye-laws with defined criteria of eligibility to become a member. The relevant provision in Chapter-II of Membership has been defined and reproduced as under:-

5. **Membership.** *The members of the Society shall be member of Institution of Engineers Pakistan with B.Sc. (Graduate Engineer) as basic qualification. The membership shall consist of:-*

*a. Persons who join in the application for registration.*

*b. Persons admitted in accordance with the by-laws.*

*c. One nominee of Registrar, Cooperatives, and ICT shall be ex-officio member of the society without holding a share or incurring any liability.*

6. **Eligibility.** *Terms and conditions for membership of the society shall be as under:-*

*a. Corporate Engineer members of the Institution of Engineers (Pakistan) are eligible to apply.*

*b. 10% quota for Non-Engineers. (For allotment of plots only).*

*c. Non-Engineers, regular employees of ECHS with more than 5 years service, are eligible to apply for balloting. They shall be considered at par with engineer member for balloting and allotment of plot but shall not be*

*entitled to contest election or cast vote.*

*d. Every Member of the Society must be:-*

*1) Of good character.*

*2) Of not less than 18 years of age except in case of a minor legal heir of a deceased member.*

*3) Holder of at least one commercial/residential plot in the Society.*

*e. Application for membership shall be in writing on the prescribed form. Such application will form part of register of members. Every member on admission shall pay the share money specified in the by-laws, which will be non-refundable. He will also pay Rs.500/- as admission fee, which after approval of membership, shall not be refundable.*

*f. On admission, each member will be issued a membership certificate which will be on prescribed form. In case it is misplaced or lost, a duplicate certificate will be issued on payment of a prescribed fee i.e. Rs.500/-*

5. While considering the above initial criteria referred in the above mentioned clause, it is clear from the bare reading of the said terms that Engineers Cooperative Housing Society has been established by the engineers and for engineers and only engineers are eligible to apply, although 10% quota has been reserved for non-engineers members in clause 6(b), whereas the conditions and responsibilities of the managing committee referred in Chapter-III clause 29 put embargo upon the members of Executive Committee in the following manners:-

29. Conditions and Responsibilities. The members of Managing Committee are to be elected

*in General Body Meeting. Conditions and tenure will be governed under following requisites:-*

- a. Only Engr members can contest election for Managing Committee Membership.*
- b. Tenure of each elected member will be 3 years.*
- c. Regular attendance of MC meetings shall be obligatory for every MC member, except for extreme emergency cases with prior permission of President/Honorary Secretary.*
- d. Three consecutive absentees without permission, shall make the member liable to cease his membership of Managing Committee.*
- e. Attendance record of MC Meetings shall be maintained by the Head Office duly signed by Hon Secy & President.*
- f. In the case of co-opted member or a member elected in place of another member after the annual election seniority shall count from the date of the annual election on which the member whose place has been filled up either by co-option was originally elected.*

*30. Disqualification. A member of the managing committee shall cease to hold office:-*

- a. On disqualification under the bye-laws.*
- b. On his not attending three consecutive meetings without permission of the President / Hon Secy or without sufficient cause being shown to the satisfaction of the committee.*
- c. If he resigns and his resignation is accepted by the Managing Committee.*
- d. Expulsion by a resolution passed in an Annual General Body Meeting by 2/3<sup>rd</sup> majority of the present members.*

6. The above referred restriction for participating

in the election process for the non-engineers members is the main cause of grievance of the petitioner and as per his version the restriction mentioned in the above bye-laws is contrary to the fundamental rights.

7. I have confronted the learned counsel for the petitioner regarding the procedure for the amendment of any provision or clause of bye-laws, whereby he referred Chapter-III of the bye-laws, which deals with the meeting and its amendment. The relevant clauses are as under:-

**General Body Meetings**

19. *The supreme authority shall vest in the General Body, meeting of which shall be held at least once a year within 3 months of annual audit or as soon thereafter as may be found practicable or at any other time when summoned by the President or by the Managing Committee of their own motion or at the written request of not less than 1/5<sup>th</sup> of the total members.*

20. *The General Body Meetings and Meetings of the Managing Committee shall be held at the registered address of the society or at places which the President may like to select. The President and in his absence the Vice-President shall preside over the deliberations of the meeting. In their absence, any member elected by a majority of the present members shall preside.*

21. *At least 15 days notice of the General Meeting shall be given through any of the leading national newspapers and to all members at their latest address available in the society's record, under postal certificate. Such notice shall specify the date, time and place of the meeting and shall contain summary of the agenda to be considered. No matter will be discussed in the General Meeting*

*which is not included in the agenda.*

22. *Amendment f bye laws shall be only carried out by 2/3<sup>rd</sup> of the members present. All other matters shall be decided by majority of votes in a normal meeting. If the votes are equal, the President shall exercise the casting vote to decide any matter.*

27. ***Following business shall be transacted only in General Body Meeting:-***

a. *Amendment of by-laws which will take effect after approval/registration by the Registrar.*

8. While considering the above position of bye-laws, there is no second opinion that bye-laws of the society restricted non-engineer members to become members of managing committee, which have been authored and prepared by the creators of the society under their objective to protect the rights of specialize class of Engineers. It is the right of any individual to constitute and establish a society under Cooperative Societies Act, 1925 as well as cooperative Rules, 1927 in which no restriction has been fixed by the Registrar upon any individual to allow every other person or to establish the society on open category basis. The concept of restricted membership has been defined in the reported case PLD 2010 SC 1058 (Bahadur Yar Jang Cooperative Housing Society Ltd. Vs. Feroze Shamsi) and such concept is not alien to the law.

9. The petitioner is a non-engineer member of the society who is not allowed to participate in the election process due to restriction covenant in the bye-laws,

however, if he intends to challenge the same he can agitate the matter in the General Meeting through an agenda and same should have been placed before the Registrar Societies where-after, petitioner can contest the election of any society in future. No other procedure is provided, even the High Court in constitutional jurisdiction is not allowed to interfere into the restricted covenant settled by the members of the society and as such bye-laws as well as rules are not *ultra-vires* as held in the reported case supra.

10. The question raised by the petitioner, even otherwise falls within the concept of business of society and petitioner has not yet approached the Registrar Cooperative Societies for redressal of his grievances rather he has challenged the election process by way of instant writ petition, whereas relevant process for such kind of request has been given in Sections 16 & 16-A of Cooperative Societies Act, 1925, which are reproduced as under:-

***16. Amendment of the bye-laws of a society. (1)***

*No amendment of the bye-law of a society shall be valid until it is registered under this Act.*

*(2) If the Registrar is satisfied that any amendment of the bye-laws [made by a society] is not contrary to [any law for the time being in force], he may register the amendment.*

*(3) When the Registrar registers an amendment of the bye-laws of the society [under the sub-section (2)], he shall issue to the society a copy of the amendment certified by him, which shall be*

*conclusive evidence that the same is duly registered.*

**16A. Powers of the Registrar to amend bye-laws.**--- (1) *If the Registrar is satisfied that the bye-laws of a society are inconsistent with any law for the time being in force, or it is necessary in the interest of the society and its members to make amendments in such bye-laws, he may, by means of a notice in writing, giving reasons, bring the fact to the notice of the society and advise the society to make the amendments within a period of sixty days.*

*(2) If the society fails to make such amendments within the time specified in sub-section (1), the Registrar may, after giving the society an opportunity of being heard, register such amendments as he may decide and issue to the society a copy of the amendment registered by him.*

*(3) An appeal shall lie to the Government from an order of the Registrar passed under sub-section (2) within two months of the date of communication of the order.]*

11. At last the petitioner has also drawn the attention of this Court towards 24<sup>th</sup> Annual General Meeting Resolution whereby Annual General Meeting has adopted the proposed bye-laws and election rules but this does not rectify or amend the original bye-laws in which restricted membership concept has been given, which remains in field unless it is amended through Annual General Meeting.

12. Keeping in view the above discussion, this Court thinks it appropriate to dispose of the instant petition by referring the petitioner to approach the



Registrar Cooperative Societies, Islamabad for redressal of his grievances under Sections 16 & 16-A of the Cooperative Societies Act, 1925, if so advised.

**(MOHSIN 'AKHTAR KAYANI)**  
**JUDGE**

Zahid