

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.775/2021

Dr. Muhammad Aziz Ullah Khan

vs.

Deputy Commissioner, Islamabad & 13 others

Petitioner by: Mr. Sher Afzal Khan Marwat, Advocate.

Respondents by: Mr. Naseem Ahmad Shah, Advocate for
Respondents No.1 to 3.
Mr. Usman Ahmad Ranjha and Mian Haseeb Ali
Bhatti, Advocates for Respondents No.5 to 11
Mr. Moneeb Ahmad, State Counsel.

Date of Hearing: 20.05.2021.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has assailed the notification dated 21.01.2021, whereby Deputy Registrar Cooperative Societies Department, ICT, Islamabad has withdrawn the notification for holding the election of the Federal Employees Co-operative Housing Society (FECHS), Islamabad as well as the notification of appointment of an Administrator.

2. Succinctly, the petitioner and contesting respondents along with proforma respondents were elected as President and office bearers of the FECHS, Sector E-11/2, Islamabad and Sector O-9, Islamabad, respectively. Asim Khurshid (Respondent No.6) on account of absence from three (03) consecutive meetings stood ceased to be a member of the Managing Committee of the Society leaving behind eight (08) Members, which fell into division of two groups, comprising of the petitioner along with proforma respondents and Respondents No.5, 7, 8 & 9. The said splitting up took place pursuant to financial irregularities pointed out by the petitioner and his alliance, as such, filing of complaint thereto by the petitioner was disposed of on account of the financial irregularities being

meager. This compelled the petitioner and the proforma respondents to put their resignations, which were accepted, as a result whereof the Managing Committee of the Society was dissolved. However, Respondent No.5 challenged the said dissolution, which resulted into manifold litigations before this Court as well as before the Registrar, Cooperative Housing Societies and ultimately, the latter vide impugned notification, dated 21.01.2021, restored the Managing Committee of the Society and withdrew the notification for holding the election of the Society. Hence, instant writ petition.

3. Learned counsel for petitioner contended that the Managing Committee of the Society was consisting of nine members, out of which four members, including the petitioner being President, tendered their resignations, which were accepted by the proper forum, as such, the Managing Committee stood dissolved, per se, restoring the Managing Committee and sending the resignations of the four members to the restored Managing Committee by the Registrar Cooperative Housing Societies is violation of the Islamabad Cooperative Housing Rules, 2018.

4. Conversely, learned counsel for respective respondents contented that Raja Jahangir Akhtar (Respondent No.13) being Ex-Treasurer of the Society was found involved in various irregularities, which were brought in the notice of the Managing Committee of the Society through an agenda but, the petitioner along with his alliance (proforma respondents) made their utmost efforts to remove the said agenda of the meeting though, all in vain; that the petitioner being President and his alliance after realizing that their irregularities had been unearthed tendered their resignations in order to save their skins; that the Registrar Cooperative Housing Societies has rightly appreciated the facts and

circumstances of the case and restored the Managing Committee of the society in accordance with law.

5. Arguments heard, record perused.
6. Perusal of record reveals that Dr. Muhammad Aziz Ullah Khan (petitioner), Ex-President of the Federal Employees Cooperative Housing Society has challenged the working of Executive Committee of the Society mainly on the ground that majority of the executive members, including the petitioner being President, have resigned from the Committee of the Society, as such, the same renders the administration of the Society meaningless.
7. In order to understand the proposition, it is necessary to reproduce the notification, dated 25.02.2020, issued by Circle Registrar Cooperative Society, Islamabad.

NOTIFICATION

Consequent upon the elections of Managing Committee of Federation of Employees Cooperative Housing Society, Islamabad, the following members of the Society have been elected as office bearers of the Society for the period of three years in accordance with the Islamabad Capital Territory Cooperative Societies (Managing Committee Election) Rules, 2014 with immediate effect:-

S. No.	NAME OF THE CANDIDATE/MS.NO.	POST
1.	Muhammad Aziz Ullah Khan/ MS:101/89/E-11	President
2.	Dr. Ghulam Rasool Khan Khattak/MS: 13/89/LB	Vice President
3.	Liaquat Ali / MS: 134/90/E-11	Secretary
4.	Jahangir Akhtar / MS: 53/89-LB	Treasurer
5.	Asim Khurshid / MS: 300/89-LB	Executive Member
6.	Syed Sadiq Hussain Shah / MS: 0106	Executive Member
7.	Shahab Uddin Shahab / MS: 207/90/E-11	Executive Member
8.	Muhammad Jamshaid / MS: 246/89-E-11	Executive Member
9.	Wajid Bhatti / MS:82/89/LB	Executive Member

8. While going through the above referred notification and the record appended with this petition, the petitioner being President, Dr. Ghulam Rasool Khan Khattak being Vice President (Respondent No.12), Raja Jahangir Akhtar

being Treasurer (Respondent No.13) and Syed Sadiq Hussain Shah being Executive Member (Respondent No.14) have tendered their resignations on 28.08.2020 Similarly, Shahab ud Din Shahab (Respondent No.7) has not attended three executive meetings of the Executive Committee and his status of being executive member has ceased to exist in terms of Model Bye-laws of the Cooperative Housing Societies Limited No.32(9).

9. Besides the above referred position, it has been argued before this Court that resignations of Raja Jahangir Akhtar being Treasurer (Respondent No.13) and Syed Sadiq Hussain Shah being Executive Member (Respondent No.14) could only be accepted by the Executive Committee and as such, the meeting of the Executive Committee could not be convened due to short of quorum, however the Secretary of the Society has managed to co-opt two members to settle the question with total five members, resultantly this Court, vide order dated 09.03.2021, has directed the Executive Committee to convene a meeting and decide the fate of above referred two members qua acceptance of their resignations, although both the members while appearing before this Court have categorically confirmed that they have resigned and are not interested to continue to work as Executive Members of the Society. In compliance of said order of this Court, a report has been submitted by the Executive Committee, who have not accepted the resignations of the said two members due to the following reasons:

"After detailed deliberations, and taking cognizance of the above exposure of facts, the Managing Committee unanimously reached at the conclusion that since both members are allegedly involved in serious financial and administrative irregularities, embezzlement and misappropriation of huge public funds, misuse of authority and failed to discharge their fiduciary duty to protect the interest of the society, therefore, acceptance of their resignations at this stage will be

miscarriage of justice. The Managing Committee believes that the resignations of both the above individuals are based on malafide intent to get away with the misappropriation and follies committed by them which tantamount permanent disqualification whereas acceptance of their resignations at this stage implies to let them go scot free and make them eligible to contest future elections of the society and to hold public office without going through the investigations of the irregularities and illegalities committed by them. Thus the Managing Committee in exercise of power vested in it under By-Law No.34(15) unanimously decided, in the best interested of the Society, not to accept resignations tendered by Raja Jahangir Akhtar and Syed Sadiq Hussain Shah."

10. The above referred report submitted by the Secretary of the Society claims to be the Minutes of 76th of Managing Committee, held on 09.03.2021, as such, perusal of the same revealed that Shahab-ud-Din Shahab, Dr. Waqar Hussain Malik and Wajid Bhatti have been declared to be President, Vice President and Acting Treasurer of the Society along with three Executive Members, who decided the matter against Respondent No.13 and 14 qua their resignations primarily on the ground that *both members are allegedly involved in serious financial and administrative irregularities, embezzlement and misappropriation of huge public funds, misuse of authority and failed to discharge their fiduciary duty to protect the interest of the society.* If this be the case, then how these two members, who had already resigned from their positions, have been made part of the Executive Committee and participated into the day to day affairs of Society when they have already been found involved in financial and administrative illegalities? Such permission granted by the Executive Committee in their 76th Meeting amounts to perpetuate the illegality indirectly.

11. The primary question referred to the Executive Committee is to decide the fate of resignations as to whether same have been put by Respondents No.13 and 14 without any duress or coercion and whether there is any hope that they may withdraw their resignations in the interest of the Society? But, the so called

Minutes of the 76th Meeting created new exception by declaring three of the members being Presiding, Vice President and Acting Treasurer without any basis and contrary to law, as such, they have changed their positions despite having knowledge that they are not President, Vice President or Acting Treasurer. The Members of the Executive Committee in the 76th Meeting were well aware of the fact that the mandate referred to them is limited to the extent of acceptance or rejection of the resignations of two Executive Members but, they have acted beyond their legal authority.

12. Besides the above referred illegalities, it has been pointed out that two of the members have co-opted to make the Executive Committee functional but, this Court is of the view that if the Executive Committee co-opted any member in terms of Rule 59 of the Islamabad Cooperative Societies Rules, 2018 which deals with the filling up of vacancies in the Managing Committee, though the same is subject to approval of the General Body Meeting, not available in this case, even there is a proviso to Rule 59 of the Rules *ibid*, which puts a clog in the working of the Managing Committee when vacancies caused by members of Managing Committee of the Cooperative Housing Society ceasing to hold office exceeds one-third of the total elected members of the Managing Committee, *it shall stand superseded forthwith and the affairs of the society shall be handed over to an Administrator who shall be appointed by the Registrar and hold office until the persons elected as Members of the Managing Committee at the elections held in pursuance of the Islamabad Capital Territory (Managing Committee Elections) Rules, 2014.*

13. In this backdrop, I am of the considered view that the co-opted members are neither empowered to decide the fate of resignations of the two elected

members nor can they vote as their votes could not be counted in the constitution of quorum, rather they are only allowed to perform their day to day affairs and not to participate in such a manner as held in the 76th Meeting of the Executive Committee, therefore, the very foundation of the 76th Meeting of the Executive Committee is illegal.

14. It is admitted fact that Executive Committee consists of nine members, out of whom the petitioner along with three (03) proforma respondents have already resigned from their positions, as such, they in unequivocal terms confirmed their resignations before this Court, per se, it manifests that the resigned members are not interested to perform their assigned duties. Out of remaining five members of the Managing Committee, one of the Executive Member namely Shahab ud Din Shahab (Respondent No.7), who on not attending three (03) consecutive meetings stood disqualified by virtue of his own conduct and he is not permitted to become an Executive Member again, as a result whereof, five members stood mislaid from total nine members of the Managing Committee of the Society. In such scenario, Rule 59 of the Islamabad Cooperative Societies Rules, 2018 comes into play. Even otherwise, the Managing Committee is not in a position to justify their legal quorum in any manner to deal with the affairs of the Society.

15. This Court comes to conclusion that working of the Society has come to less than 1/3rd and it was in the interest of the Members and Society that an Administrator be appointed. I have also gone through the series of orders passed by the Registrar Cooperative Housing Societies and other officials that the working of the Managing Committee and Society is in deplorable condition and the internal tug of war amongst the members of the Executive Committee has

ruin the affairs of the Society. The intent and purpose of various orders appended with this petition reveals the following details:

1. *The Managing Committee of the society was notified on 25.02.2020.*
2. *Mr. Liaqat Ali Gondal (Secretary) was suspended by the Registrar and Deputy Registrar was appointed Inquiry Officer vide order dated 19.06.2020 on application of Dr. Aziz Ullah Khan (present petitioner).*
3. *The Deputy Registrar held an inquiry and prepared its report vide dated 19.08.2020.*
4. *Mr. Laiqat Ali Gondal restored on his post on 27.08.2020.*
5. *Mr. Ghulam Rasool Khan Khatak (V.P), Raja Jhangeer Akhter (Treasurer) & Syed Sadiq Hussain Shah (E.M) tendered their resignation to Dr. Aziz Ullah Khan (President), who accepted their resignations and thereafter tendered his own resignation to Registrar Cooperative on 28.08.2020.*
6. *The Registrar dissolved the entire M.C. and appointed an administrator vide notification No.3244/CR/ICT/B dated 28.08.2020 and its corrigendum No.3922/CR/ICT/B dated 06.10.2020.*
7. ***Mr. Laiqat Ali Gondal (Secretary) challenged the dissolution order** dated 28.08.2020 before Secretary Cooperative (D.G. ICT) by filing revision petition and the same was decided / remanded back on 28.10.2020.*
8. *The Registrar constituted election commission on 25.11.2020.*
9. ***Mr. Laiqat Ali Gondal filed a Writ petition No.3879/2020** against constitution of Election Commission before Honorable Islamabad High Court, Islamabad.*
10. *Thereafter Registrar Cooperative withdrew notifications of dissolution dated 28.08.2020 and corrigendum dated 06.10.2020 and vide notification No.4313/CR/ICT/B dated 22.12.2020 and vide order No.4316 CR/ICT/B dated 22.12.2020 also withdrew the notification of Election Commission.*
11. *It is important to mention here that the Registrar Cooperative referred all the resignations to the M.C. for its decision regarding*

acceptance / rejection as per model by-laws No.34(15) vide notification dated 22.12.2020.

12. *Thereafter **Mr. Laiqat Ali withdrew his writ petition** on 23.12.2020 from Honorable Islamabad High Court, Islamabad.*
13. *Mr. Aziz Ullah Khan (president) filed another application and Registrar Cooperative on 04.01.2011 again dissolved the entire MC and restored notifications dated 28.08.2020 and also withdrew notification No.4313 CR/ICT/B dated 22.12.2020 (which was submitted in IHC in W.P. # 3879/2020)*
14. ***Mr. Laiqat Ali Gondal again filed W.P. # 118/2021** and challenged the notification No.119/CR/ICT/B dated 04.01.2020 (dissolution of MC) and 4316/CR/ICT/B dated 22.12.2020 (appointment of Election Commission) and schedule of election dated 15.01.2021.*
15. *Again the Registrar vide notification No.514/CR/ICT/B & 515/CR/ICT/B dated 21.01.2021 withdraw the dissolution notifications dated 04.01.2021.*
16. ***Mr. Laiqat Ali Gondal again submitted notifications** dated 21.01.2021 in W.P. # 118/2021 and Honorable Islamabad High Court, Islamabad disposed off the W.P. vide order dated 22.01.2021 with the observations that the instant petition has born fruit.*
(Underlining is mine provided for emphasis)

16. The above referred events with respect to orders passed by the Registrar, issuance and withdrawal of different notifications and filing of four writ petitions by Liaqat Ali Gondal being the then Secretary of the Society demonstrate that vacuum created by the resignations of four members and one disqualified member of the Managing Committee has not left any chance of re-constitution of the Managing Committee as it could not function due to lack of quorum, as such, it warrants fresh election. It appears that in a desperate attempt made by the then Secretary Liaquat Ali Gondal to lend credibility and legal cover to the Managing Committee, an order has been managed from this Court, as a

result whereof 76th Meeting of the Managing Committee was held, though the same was also illegal, especially when two of the members co-opted, who were not legally authorized to participate in such type of proceedings, such kind of practice, if allowed in the present scenario, it will lead to filling up the legal lacunas in constituting a valid quorum through an illegal manner, which is not permissible under the law.

17. I have gone through the powers of Registrar, who under By-laws 34(13) cannot accept the resignation of the Member of Executive Committee, rather it is the mandate of the Managing Committee, though the Managing Committee lost its quorum due to technical handicap, therefore, in such scenario, when Respondents No.13 and 14 are not legally authorized to resume their duties, no other intention could be gathered with respect to functionality of the Managing Committee.

18. I have also gone through the model By-laws and as such, the minimum requirement of the quorum is five members out of nine, which is not available in present situation. As per the scheme of By-laws, it has been observed that elected members of the Managing Committee have preference over the co-opted members due to the mandate granted to them, even they are liable for any loss caused to the Society. Now it emerges on record that Respondents No.13 and 14 have been declared involved in financial illegalities qua affairs of the society, hence they are not allowed to continue with any official working of the Society.

19. In view of above, instant writ petition is ALLOWED and Registrar, Cooperative Housing Societies, Islamabad (Respondent No.1) is directed to notify an Administrator of the Society within the period of 02 days from passing of this judgment, who shall announce the schedule of the election to be

conducted within the period of 90 days, in accordance with law. Till then, the day to day affairs could only be run by the Administrator without any involvement of the previous Members of the Executive Committee, who have not yet resigned, including the then Secretary Liaqat Ali Gondal but, by virtue of this order, their status ceased to exist. The Executive Committee, at present, if passes any order during the process of this litigation, the same would be considered void for not being in the interest of the Society.

20. Before parting with this judgment, it is expected from the Registrar Cooperative Housing Societies and from the Administrator of the Society to perform their lawful duties in accordance with law, under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 31st May, 2021.

JUDGE

Khalid Z.