

Form No: HCJD/C

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Intra Court Appeal No.49 of 2017

***Administrator Islamabad Club, through Secretary Islamabad Club,
Islamabad***

Versus

Mrs. B. Ayisha Mustafa and another

Appellant's by : Mr. Wasim Abid, Advocate.
**Respondent's by : Mr. Idrees Ashraf, Advocate for
respondent No.1.**

Writ Petition No.2219 of 2011

***Dr. Farnaz Malik, Joint Executive Director/Chief Drugs Control &
(Traditional Medicine Division), National Institute of Health,
Islamabad***

Versus

The President of Pakistan and 3 others

**Petitioner's by : Raja Niaz Ahmad Rathore,
Advocate.**
**Respondents' by : Mr. Wasim Abid, Advocate for
respondents No.2 &3.**

Date of Hearing : 19.9.2018

AAMER FAROOQ, J. - This judgment shall decide the instant appeal as well as Writ Petition No.2219 of 2011, as common questions of law and facts are involved.

2. In the instant appeal, the appellant is aggrieved of Judgment dated 25.1.2017, whereby the Judge in chambers held that a petition under Article 199 of the Constitution is maintainable against Islamabad Club and disposed of the same with the direction to the appellant to consider case of respondent No.1, afresh in light of the observations made in the Judgment.

3. In Writ Petition No.2219 of 2011, the petitioner is aggrieved of refusal on part of Islamabad Club to grant her membership.

4. Learned counsel for the appellant/Administrator Islamabad Club while arguing appeal, *inter-alia*, contended that Islamabad Club is not a legal entity nor a legal person and does not have statutory Rules hence is not a person within the meaning of the word as provided in Article 199 of the Constitution. It was further contended that under the law i.e. Islamabad Club (Administration) Ordinance, 1978, Administrator Islamabad Club is the sole entity in whom the entire functions of the Club is vested. In this behalf the learned counsel placed reliance on Sections 4(c) and 4(g) of the Ordinance. Reliance was also placed on case reported as "*Muhammad Rasheed Vs. District Coordination Officer & 2 others*" **(2002 CLC 1033)**. Learned counsel further argued that Islamabad Club is not performing functions in connection with affairs of the Federal Government. Reliance was placed on case reported as "*Maqsood Ahmad Toor Vs. Federation of Pakistan*" **(2000 SCMR 928)**, "*Syed Ali Gohar Shah Vs. Asif Ali Zardari and 3 others*" **(1999 MLD 3258)** and "*Secretart B, & R, Government of West Pakistan & 4 others Vs. Fazal Ali Khan*" **(PLD 1971 Karachi 625)**. It was further contended that respondent No. 1 does not reside in Pakistan. It was also contended that no person has vested or legal right to be granted membership which can be enforced through a constitutional petition. It was further contended that respondent No.1, is not an aggrieved person. It was further highlighted that under the by-laws of the Islamabad Club only a single spouse can be named by any member to be entitled to transfer of membership

under the Club Rules and in this behalf on death of the member i.e. Major Retired Khan Ghulam Mustafa his spouse Gulzar Begum became the member and she also died and that extinguished the membership. It was further contended that the writ petition suffers from *laches* inasmuch as the issue regarding transfer of membership arose in 2007, whereas the petition was filed belatedly.

5. Learned counsel for Islamabad Club while responding the Writ Petition No.2219 of 2011 contended that he reiterates the arguments on maintainability of the petition, but also contended on merit that the petitioner applied for membership under the class service membership, but her application was declined on the basis that she was not eligible for the same as she was an employee of autonomous organization at the time. It was further contended that advance deposit made at the time of application was also returned which the petitioner has withdrawn.

6. Learned counsel for the petitioner in Writ Petition No.2219 of 2011, *inter-alia*, contended that the petitioner is a government servant and working as Drug Controller in the Ministry of Health (BPS-20); she at the relevant time was working as Joint Executive Director/Chief Drugs Control & (Traditional Medicine) Division, National Institute of Health, Islamabad being an autonomous body under the federal Ministry of Health, Islamabad. She applied for the membership of Club in December, 2009, and paid the requisite amount in advance. It was further contended that to the utter dismay of the petitioner her application was declined after a year and half. It was contended that the impugned action of the petitioner is in violation of her fundamental rights and even is not in accordance with Rules and Regulations of the Club.

7. Learned counsel for respondent No.1 in ICA No.49 of 2017, *inter-alia*, contended that a petition under Article 199 of the Constitution is maintainable against Islamabad Club in light of the decision of Hon'ble Supreme Court of Pakistan reported as "*Aitchison College, Lahore through Principal Vs. Muhammad Zubair & another*" **(PLD 2002 S.C. 326)**, "*Salahuddin & 2 others Vs. Frontier Sugar Mills & Distillery Ltd., Tokht Bhai and 10 others*" **(PLD 1975 S.C 244)** "*Pakistan Defence Officers Housing Authority and others Vs. Lt. Col. Syed Jawaaid Ahmed*" **(2013 SCMR 1707)**, "*Ishaq Khan Khakwani Vs. Islamabad Club through Secretary and others*" **(2016 CLC 504)**, "*Messrs Huffaz Seamless Pipe Industries Ltd. Vs. Sui Northern Gas Pipelines Ltd. and others*" **(1998 CLC 1890)**.

8. Arguments advanced by the learned counsels for the parties have been heard and the documents placed on record examined with their able assistance.

9. In the instant appeal the facts leading to the filing of the same are that one Ghulam Mustafa, a member of Islamabad Club under membership No.1668-S, died on 19.3.2007, and was survived by two wives namely respondent No.1 and Gulzar Begum. Upon request of Gulzar Begum membership of deceased member was transferred in her favour. Respondent No.1, also made an application for transfer of membership but the same was declined. Respondent No.1, agitated the matter by way of a petition under Article 199 of the Constitution which was disposed of holding that the petition against Islamabad Club is maintainable and that the decision taken by the Club in refusing transfer of membership to respondent No.1, was not in accordance with by-laws.

10. In case of Writ Petition No.2219 of 2011, the petitioner who at the relevant time was working as Joint Executive/Chief Drugs Controller National Institutes of Health Islamabad applied for membership in the category service membership on account which was turned down due to the fact that she is not in service of Government of Pakistan, but rather is in employment of autonomous organization hence does not qualify to be granted membership in the service category.

11. The common question of law in both the cases is plea taken on behalf of Islamabad Club that it is not a person for the purposes of Article 199 of the Constitution hence a petition under Article 199 of the Constitution is not maintainable and the by-laws which govern the functioning of Islamabad Club are non-statutory hence any action taken on the basis thereof cannot be agitated in a petition under Article 199 *ibid*. Islamabad Club initially was established as a social and residential Club for the entertainment of the officers of the federal government and the members of the diplomatic corps. At the time of inception it was incorporated as a limited liability company in 1968, under the Companies Act, 1913. However, in 1978, the Management and working of the Club Administration underwent change through Islamabad Club (Administration) Ordinance, 1978. Under Section 4 (a) of 1978, Ordinance the Company was dissolved and by virtue of Section 4(c) the Administration of the affairs of the Club got vested in the Administrator. Likewise, under Section 4(d) all assets, rights, powers, authorities, privileges etc. which were originally of the company were transferred to and vested in the Administrator and under Section 4(g) all proceedings instituted by or against the

company would be deemed to be pending as instituted or defended by the Administrator. For ease of convenience, Section 4 is reproduced below:-

"4. Dissolution of Company etc., On the commencement of this Ordinance,---

(a) the Company shall stand dissolved;

(b) any person exercising or having the right to exercise immediately before Such commencement any power or function in relation to the Islamabad Club shall cease to exercise or to have the right to exercise such power or function;

(c) the administration of the affairs of the Islamabad Club shall vest in the Administrator;

(d) all assets, rights, powers, authorities and privileges, all property, movable and immovable, cash and bank balances, reserve funds, investments and all other interests and rights in, or arising out of, such property, of the Company shall stand transferred to, and vest in, the Administrator;

(e) all debts and liabilities incurred, all obligations undertaken, all contracts entered into, and all agreements made by or with the Company, shall stand transferred to, and be deemed to have been incurred, undertaken, entered into or made, by or with, the Administrator;

(f) any sum payable to, or recoverable by, the Company shall be deemed to be payable to, or recoverable by, the Administrator; and

(g) all suits and other legal proceedings instituted by or against the Company before such commencement shall be deemed to have been instituted by or against the Administrator and may be continued or proceeded with accordingly".

12. The office of the Administrator was created under Section 6 *ibid* which reads as follows:-

6. Administrator.—(1) The Federal Government shall appoint an officer of Government drawing pay in a grade not lower than grade 21 in the National Pay Scales to be the Administrator of the Islamabad Club in addition to his duties as such officer.

(2) Unless the Federal Government otherwise directs, the Administrator shall hold office for a period of two years and shall be eligible for reappointment.

(3) The Administrator may, by writing under his hand addressed to the Federal Government, resign His office.

(4) The Administrator shall, subject to any direction issued by the Federal Government, be competent to exercise and perform all such powers and functions as may be necessary

for the efficient administration of the affairs of the Islamabad Club.

The bare perusal of Section 6 (4) shows that the Administration of the affairs of Islamabad Club are vested in the Administrator. However, in order to advise and aid the Administrator a Management Committee is constituted under Section 6 (A) of the 1978, Ordinance. The examination of the above Sections and the scheme of the law shows that Islamabad Club has no juristic entity and Administrator of the Club is the sole person in which are vested all rights, assets, privileges and liabilities of the club. Under Section 4(g) all proceedings are to be initiated or defended in the name of the Administrator. However, it is an admitted position that the Administrator is a civil servant being in service of Pakistan not below the rank of grade (BPS-20) and likewise the Management Committee which comprises mostly Civil Servants is to be appointed by the federal government. Even the appointment of the Administrator is by the federal government. This shows that the federal government has the administrative control over the affairs of Islamabad Club. The President is the patron in chief of the Club, under Section 5 *ibid*. Though Islamabad Club charges membership fee and also charges fee for the facilities it provides however, the fee is subsidised and the government time and again provides grants and other concessions. So some part of the funding of the Islamabad Club is by the federal government.

13. In the above backdrop it needs to be examined whether the Islamabad Club is a person carrying on affairs of federation in light of the case law on the subject. In *Aitchison College, Lahore*

through Principal Vs. Muhammad Zubair & another" **(PLD 2002 S.C.**

326) the august apex Court observed as follows:-

"Applying the above test on the facts of instant cases, we feel. no hesitation in drawing inference that the Board of Governors, Aitchison College. Lahore headed by the Governor of the Province as its President alongwith other officers i.e. Secretaries Education, Finance and General Officer Commanding as well as unofficial Members are involved in providing education which is one of the responsibility of the State and by taking over its management and control the Board, exercises sovereign powers as well as public powers being a statutory functionary of Government who in order to provide it tell legal/Constitutional protection had brought it Z into the folds of its Education Department by amending the Provincial Rules of Business as back as in 1994 and even if for sake of arguments if it is presumed that no financial aid is being provided to the College from the Provincial Public exchequer, even then, the College remains in dominating control of the Provincial Government through Board of Governors. Therefore, the above test stands fully satisfied and we are persuaded to hold that organization of the Aitchison College, Lahore falls within the definition of a person".

In holding that a petition under Article 199 of the Constitution is maintainable against Aitchison College, Lahore the august Apex Court placed reliance on its earlier decision in case reported as *"Salahuddin & 2 others Vs. Frontier Sugar Mills & Distillery Ltd., Tokht Bhai and 10 others"* **(PLD 1975 S.C 244)**. In *"Syed Ali Gohar Shah Vs. Asif Ali Zardari and 3 others"* **(1999 MLD 3258)** the Hon'ble Sindh High Court while adjudicating upon a petition under Article 199 of the Constitution against Administrator Race Club Karachi held that the mere fact that the Administrator of Club was appointed by the Governor could not lead to inference that he was performing functions in connection with the affairs of the federation or the province. It was further observed that functions which Administrator was performing in connection with the affairs of Club could not be regarded as functions of State. In *"Anoosha Shaigan Vs. Lahore University of Management Sciences through Chancellor and others"*

(PLD 2007 Lahore 568) the Hon'ble Lahore High Court while adjudicating upon maintainability of a petition against Lahore University of Management Sciences observed that word "control" appearing in the aforementioned definition in Article 199 of the Constitutions is not restricted to the financial control of government, but the executive control as well; it does not unnecessarily mean the financial control over the bodies that are under the administrator.... control of the federal or the provincial government which are amenable to the jurisdiction under Article 199 of the Constitution.

14. The upshot of principles laid down in above case law shows that a petition under Article 199 of the Constitution is maintainable against a person carrying on the affairs of federation, province or the local authority. In this regards the word person is defined in Article 199(5) of the Constitution which included a body politic or juristic person /corporation or an authority and/or under the control of the federal government. In order to determine whether any body corporate or authority is under the control of federal government test is two pronged i.e. the administrative control of the federal government and the financial control. As noted above in the instant case, Islamabad Club is not a juristic person or a corporation or a body politic but rather is a name given to an association of persons created under the 1978, Ordinance; the legal person in which the entire setup vests is the Administrator of the Club, who admittedly is appointed by the federal government and can be removed by it. All legal proceedings are to be initiated and defended in the referred designation. Respondent No.1, in the instant appeal did not implead Administrator as a respondent rather the respondent was Islamabad Club through Secretary. Likewise, in

Writ Petition No.2219 of 2011, respondent is Islamabad Club through its President/Chairman and even the President of Pakistan. In the referred position of law no writ petition can be issued against either President of Pakistan or Islamabad Club acting through Secretary and or Chairman.

15. The working of Islamabad Club is governed under the by-laws and the Rules. Under Rule 3, there are classes of membership including service members. The eligibility of the service member is provided in Rule 3.2.a whereby those in grade-17 or above in the service of government of Pakistan, commissioned officers of defence forces etc. are eligible for membership of club. In so far as the transfer of membership is concerned, the same is governed in by-laws No.3, clause-3 of the same provides that the membership can be transferred in the name of the spouse only on the death of a member. If the spouse is not interested it shall stand cancelled. Under Section 10 of the Islamabad Club Administration Ordinance, 1978, the federal government may make Rules for carrying out the purposes of this Ordinance. The Rules of the Club cannot be termed as statutory in light of the judgment reported as "*Pakistan Defence Officers Housing Authority Vs. Itrat Sajjad Khan & others*" (**2017 SCMR 2010**). In the referred judgment the august Apex Court observed that Rules in dealing with instruction for internal control are treated as non statutory while those whose area of efficacy is broader and/or complementary to the parent statute in the matter of crucial importance are statutory. Similar views were expressed by the august Apex Court in cases reported as "*The Principal, Cadet College, Kohat and another Vs. Muhammad Shoab Qureshi*" (**PLD 1984 S.C 170**) and "*Muhammad Zaman and others Vs.*

Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others **(2017 SCMR 571)**. On the touchstone of the law laid down by the august Apex Court the Rules & by-laws of the Islamabad Club are for internal management and control, hence non-statutory. It is trite law that a petition under Article 199 of the Constitution is not maintainable for enforcement of non-statutory Rules or for civil rights, if any. Even otherwise, the essence of a club is to regulate its membership and/or govern its internal functioning and no interference can be made to such regulations and affairs by the Courts would defeat the concept of the Club. The decisions taken to oust the member and/or to refuse membership are the sole prerogative of the Administration of the Club and such decisions or administrative matters are not justiciable in a petition under Article 199 of the Constitution.

16. In view of the above, the instant appeal is allowed and the impugned Judgment dated 25.1.2017, is set-aside. Consequently, Writ Petition filed by respondent No.1, is dismissed. Likewise on the basis of aforementioned discussion the Writ Petition No.2219 of 2011 is **dismissed**.

(AAMER FAROOQ)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in Open Court on 17/12/2018.

JUDGE

JUDGE

Niqab M