

Form No: HCJD/C-121

ORDER SHEET.IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT***Writ Petition No.3855 of 2016******Professor Dr. Shah Junaid Ahmad Hashmi and 2 others******Vs.******Registrar Cooperative Societies, Islamabad & two others***

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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PETITIONERS BY:M/s Sher Afzal Khan, Ch. Waqas Zamir &
Malik Ghulam Sabir, Advocates in their
respective petitions.***RESPONDENTS BY:***Ch. Abdul Khaliq Thind, Standing Counsel & M.
Faraz Siddiqui, Legal Assistant, Circle
Registrar, ICT, Islamabad.***DATE OF DECISION:*** 09.11.2016

AAMER FAROOQ, J. Through this consolidated judgment, I shall render detailed reasons for short order dated 09.11.2016, whereby, the instant petition was dismissed; Writ Petition No.3896/2016 and Writ Petition No.4026/2016 were allowed and Writ Petition No.3898/2016 was disposed of as having become infructuous.

2. All the above mentioned petitions including the instant petition pertain to holding of Election for various offices in the management of Islamabad Farming Cooperative Society (The Society). In this behalf, the instant petition was filed impugning order dated 21.10.2016, whereby, the election process was scrapped due to failure to comply with Rule-6 of

Islamabad Capital Territory Cooperative Societies (Managing Committee Elections) Rules, 2014 (The Rules). The petitioners in the instant petition, had challenged the candidature of M/s Malik Muhammad Akram, Muhammad Arshad and Muhammad Awais which was turned down by the Election Commissioner vide order dated 14.10.2016. The referred persons filed an appeal under Rule-15 (2) of the Rules before respondent No.1 which was dismissed to the extent of disqualification of the said persons, however, respondent No.1 vide the impugned order scrapped the election process. Malik Muhammad Akram, Muhammad Arshad and Muhammad Awais have challenged order dated 21.10.2016 to the extent of dismissal of appeal by respondent No.1 vis-a-vis candidature for the posts of President Vice President and Executive Member (W.P No.3896/2016), Mr. Sajjad Khan, a Member of the Society filed petition challenging the Election process carried out by respondent No.3 as without lawful authority (W.P No.4026/2016). Similarly, Kausar Khan another Member of the Society challenged the Election process as being in violation of the Rules.

3. The learned counsel for the petitioner, in the instant petition, inter-alia, submitted that respondent No.1 had no authority/jurisdiction to scrap the Election Process while hearing appeal under Rule-15(2) of the Rules. In this behalf, it was contended that under the Cooperative Societies Act, 1925 as well as the Rules there is no power given to respondent No.1 to exercise suo moto power for scrapping the election process.

4. The learned counsel for respondents, inter-alia, submitted that under section 64-A of the Cooperative Societies

Act, 1925 the Registrar has power to call for record of any inquiry proceedings undertaken by any subordinate officer. Reliance was placed on "*Citizen Cooperative Housing Limited Vs. Agha Taj Muhammad Academy* (2011 YLR 246 Karachi) and "*Abdul Ghaffar and another Vs. Abdul Rauf & two others*" (2016 PLC 138).

5. The learned counsel for the petitioners in Writ Petition No.3896/2016, inter-alia, submitted that the nomination papers filed by the petitioners were scrutinized by the Election Commissioner, appointed by the Authority, whereas under the Rules, the same had to be done by Election Commission; therefore, orders dated 14.10.2016 as well as 21.10.2016 are without lawful authority. It was further submitted that even otherwise, bye-laws of the Society as well as the Cooperative Societies Act, 1925 does not provide that there should be confirmation in the General Meeting for a person to become Member of the Society; therefore, the fact that membership of the petitioners has not been confirmed in the general meeting is inconsequential. It was further contended that the names of the petitioners are reflected in the list of members handed over by Society to the Election Commission.

6. The learned counsel for respondents No.5 to 8, inter-alia, contended that the confirmation of the membership by the general meeting is mandatory and since the same has not been done, therefore, the petitioners are not members and are disqualified from contesting Election.

7. The learned counsel for the petitioner in Writ Petition No.3898/16, inter-alia, contended that the mandatory provisions

of the Rules have not been complied with; in this behalf, it was contended that Rule-6 has not been followed, hence the entire proceedings are coram non judice.

8. The learned counsel for the petitioner in Writ Petition No.4026/2016 adopted the arguments by the learned counsel for the petitioner in Writ Petition No.3898/2016.

9. After hearing the learned counsels for the parties on 09.11.2016 a short order was passed deciding all the petitions mentioned above, which is as follows:

- a) Since the election schedule was issued by the Election Commissioner solely and not by the Election Commission as defined in Rule 6 of the Islamabad Capital Territory Cooperative Societies (Managing Committees Election) Rules, 2014 (the Rules) therefore, the same is without lawful authority.
- b) Since Election Commission did not prepare and notify a list of eligible voters for the election within ten days of publication of Election Schedule of Islamabad Farming Cooperative Housing Society as required under Rule 6 of the Rules, therefore, serious irregularity has been committed.
- c) Election process vis-a-vis election of Managing Committee of Islamabad Farming Cooperative Housing Society is declared to be unlawful due to failure to comply with the Rules.
- d) Registrar, Cooperative Societies shall ensure compliance of Election Rules by issuing appropriate directions to Election Commission which shall

promulgate fresh election schedule and invite nominations for the same. The entire process shall be completed expeditiously preferably within a period of 45 (forty-five) days.

- e) Registrar, Cooperative Societies shall submit compliance report to Deputy Registrar (Judicial) of this Court.

10. The legal issues that require adjudication by this Court are twofold viz; The Authority/Jurisdiction of the Registrar Cooperative Societies to scrap the election process and the effect of failure by Election Commission to follow the Rules. The Election of a Society are regulated by the Rules; in this behalf Rule-6 (i) provides for constitution of Election Commission by the Authority for holding Elections at least 90 days prior to the expiry of the term of the existing Managing Committee. The Election Commission, under the said Rules, comprises of an Election Commission and two Members from amongst the members of the Society other than the existing office bearers or the candidates contesting the Election. The Authority is defined in Rule (2) (i)(B) as defined in section 3(f) of The Cooperative Societies Act, 1925 to mean as Registrar of the Cooperative Societies i.e. respondent No.1. The Registrar/respondent No.1 constituted the Election Commission as prescribed under the Rules; in this behalf, Assistant Commissioner, Pothohar, was nominated as Election Commissioner/respondent No.3 and two other members were appointed and collectively the three of them comprised Election Commission. On 24.8.2016 in the newspapers election schedule was given which required all the candidates interested in contesting election to collect the

nomination forms which were to be submitted by or before 20.9.2016 and the scrutiny was to be accomplished on 29.9.2016 in presence of the candidates. Appeals against the rejection of the nomination papers could be filed by or before 03.10.2016, which were to be heard and decided on 06.10.2016. A candidate could withdraw from candidature before 11.10.2016 and the final list of candidates was to be prepared on 14.10.2016. The qualification for contesting election was mentioned at serial No.3 which inter-alia included a member of the Society who is owner of a plot and has paid the entire consideration for the referred plot. Under Rule-6 (3), the Election schedule is to be prepared and conveyed by the Election Commission constituted under Rule-6 (i) *ibid*. The bare perusal of the advertisement mentioned above shows that the Election schedule has been proclaimed in the newspaper i.e. "Daily Jang" dated 24.8.2016 by the Election Commissioner. Therefore, the Election Schedule has not been prepared and circulated by the Election Commission as required under the Rules; similarly, the scrutiny of the documents under the Rules is to be conducted by the Election Commission which is borne out from Rule-8 *ibid*; under Rule 8 (ii) all nomination papers are to be scrutinized and verified by the Election Commission with such assistance as it may deem necessary, similarly under Rule-8(iv) appeal against the rejection or acceptance of the nomination papers by the Election Commission lies to the authority. In this behalf order dated 14.10.2016, regarding determination of qualification of the petitioners in Writ Petition No.3896/2016 was passed by the Election Commissioner and not the Election Commission as required under the Rules, therefore, is *coram non judice*.

Moreover, the Election schedule appearing in "Daily Jang" was not adhered to inasmuch as the verdict on the disqualification of the petitioners in Writ Petition No.3896/2016 was rendered on 14.10.2016, whereas, as per advertisement the same was to be given on 03.10.2016.

11. It was also argued before this Court that under Rule-6(iv) of the Rules, the Committee of the Society is to provide the original/attested record of its membership to the Circle Registrar 15 days before the expiry of its term and the Election Commission is to prepare and notify a list of eligible voters for the Election within 10 days of publication of the Election Schedule of the Society. The learned counsels for the parties did not argue that the referred Rule has not been complied with; however, it is not apparent from the record appended with the parties that list of eligible voters for the election was notified within 10 days of publication of election schedule of society. It is an established principle that where a law requires a thing to be done in a particular way it should be done in that way or not at all. Reliance is placed on case titled *Muhammad Mustafa Vs. Syed Azfar Ali and three others (PLD 2014 Sindh 224)*, *Commissioner Income Tax/Wealth Tax, Companies Zone-III Lahore Versus Messrs Idara-i-Kisan Lahore (206 PTD 2569)*, *Muhammad Sharif Versus SHO (PLD 1997 Lahore 692)* and *Mazhar Illahi Versus The State (PLD 2008 Peshawar 162)*.

12. The Rules mentioned herein above, clearly spell out that the entire Election Process is to be conducted by the Election Commission constituted under Rule-6 of the Rules, whereas, in the instant case, the entire process has been conducted by the Election Commissioner, who had no authority

to act solely under the Rules, therefore, the entire Election process has been undertaken without lawful authority.

13. Under Section 3(7) of the Cooperative Society Act, 1925, the Registrar Cooperative Societies is the Authority and under section 64(A) of the referred Act has suo moto powers to call for record of any proceedings or process carried out by any subordinate Officer. Reliance is placed on cases titled *Yousaf Hussain Khan Versus M. Mursalin Y. Burney (1990 CLC 781)*, *Karachi Cooperative Housing Society Versus Government of Sindh (1990 MLD 389)* and *Ch. Muhammad Basharat Versus Chief Commissioner Islamabad (PLD 2012 Islamabad 31)*.

14. In view of above, the Registrar Cooperative Societies i.e. respondent No.1 had the Authority to examine the legality of Election Process, therefore, order dated 21.10.2016 to the extent of scrapping Elections is within the four corners of law. However, since the scrutiny of the nomination papers and legality was to be determined by the Election Commission, therefore, orders dated 14.10.2016 and 21.10.2016 (to the extent of determining the disqualification of petitioners in Writ Petition No.3986/2016) are set aside. Similarly, since the Election Process has not been carried out by the Election Commission, therefore, the same is without lawful authority.

15. For the foregoing reasons, the instant Writ Petition is dismissed. Writ Petition No.3896/16 as well as W.P No.4026/2016 are allowed and Writ Petition No.3898/2016 is disposed of having become infructuous. It is expected that the entire election process shall be completed within a period of forty

five days and in this behalf intimation be made to Deputy Registrar (judicial) of this Court.

(AAMER FAROOQ)
JUDGE

Approved for Reporting

JUDGE