

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

No. IHC/Judl.Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP-1525-15

Titled. Ishaq Khan Khakwani Vs Islamabad Club through Its Sec, etc

a) Judgment approved for reporting

✓  
Yes/~~No~~

b) Judgment any comment upon the conduct of the  
Judicial officer for quality of the impugned judgment  
Is desired to be made.

Yes/No

(In case the answer is affirmative separate  
confidential note may be sent to the Registrar  
drawing his attention to the particular aspect).

Initial of the Judge.

NOTE.

1. If the slip is used, the Reader must attach on top of first Page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for reporting of any comment is to be made about the judicial officer / quality of judgment.
3. This slip is only to be used when some action is to be taken.

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Writ Petition No. 1525 of 2015**

Ishaq Khan Khakwani

**Versus**

Islamabad Club through its Secretary, Etc

Date of Hearing: - 28<sup>th</sup> October, 2015  
Petitioner By: - Mr. Furrukh Shahzad Daal, Advocate,  
Respondent By: - Mr. Afzal Siddiqui, learned ASC.

**J U D G M E N T**  
**MUHAMMAD ANWAR KHAN KASI, CJ:-**

Petitioner is a former member of National Assembly and remained Minister for State for Railway & IT, Ministry. His grievance pertains to letter dated 12.12.2014 issued by the Islamabad Golf Club whereunder his membership of the club was cancelled due to purported default in payment of prescribed charges and failure to utilize the facility.

2. Initiating the arguments learned counsel for respondent was vociferously assailed maintainability of this petition by submitting that none of the respondents are legal entities and they are not performing functions in connection with the affairs of Federation resultantly do not fall within the definition of person contained under Article 199 of the Constitution. He adds that petitioner having no concern with the club has no locus standi to file the petition and function of club cannot be brought under judicial scrutiny in extraordinary writ jurisdiction. Learned counsel placed reliance on case laws titled as “Anoosha Shaigan Vs. Lahore University of Management” [PLD 2007 Lahore 568].”

3. In response to preliminary objection with regard to maintainability, learned counsel for petitioner submits that respondent club is creation of a statute namely the Islamabad Club (Administration) Ordinance, 1978 [Ordinance No. XXXIII of 1978] and it is fully controlled and financed by the Federal Government, therefore, it is performing function in connection with the affairs of Federation and falls within definition of person under Article 199. In support of this contention, learned counsel placed reliance on case laws titled as “Salahuddin & two others Vs Frontier Sugar Mills & Distillery Ltd, Tokht Bhai & ten others” [1975 SC 244], “Aithchison College, Lahore Vs. Muhammad Zubair, & another” “ [PLD 2002 SC 326], “Maqsood Ahmad Toor & four others Vs FOP, etc “ [2000 SCMR 928], “Syed Arshad Ali & Fifty five others Vs Pakistan Telecommunication Company Ltd through President & eight others” [PLD 2007 Karachi 214], “Nisar Muhammad & another Vs Sultan Zari “ [ PLD 1997 Lahore 852] “ Messrs Huffaz Seamless

Pipe Industries Ltd Vs Sui Northern Gas Pipelines Ltd & anothers” [1998 CLC 1890].

4. Learned counsel further submits that petitioner is a distinguished personality having elite portfolio at his credit while he is also member of Gymkhana Club & Polo Club, Lahore. He adds that petitioner had been using the facilities of Golf Club since 2004-2005 and applied for change of his membership status to out station member, but his request was not responded and he was later issued the impugned cancellation intimation without any rhyme or reason.

5. It is next submitted that the impugned action is politically motivated as a part of campaign against a political party. He adds that no default notice was issued requiring petitioner to pay the charges and no opportunity of hearing was afforded to him due to which the same lacks lawful authority.

6. Learned counsel for respondent repelled the submissions by stating that Islamabad Golf Club is non est and it is only notional reference used for the purpose of affiliation with Golf Sports Bodies while factually it is only one of the facilities offered at Islamabad Club. He adds that petitioner has no relation with the Islamabad Club as he had never been a member of the Club instead a temporary arrangement for facilitating the Golf players was extended to him and his status was not more than a guest.

7. Heard & record perused.

8. Primarily, the maintainability of petition requires determination. The respondent challenges the maintainability from following two perspectives:-

- (1) That the respondents are not persons within the meaning of Article 199 as they are not performing function in connection with the affairs of Federation,
- (2) That petitioner does not possess locus standi and has raised disputed questions of facts which cannot be examined in constitutional jurisdiction.

9. In order to ascertain as to whether Islamabad Club is a person amenable to constitutional jurisdiction or not, it would be imperative to examine the functions performed by the Club and has to be seen whether such functions are being performed in connection with affairs of Federation. The test for such assessment has been given in case of “Salahuddin Vs. Frontier Sugar Mills” [PLD 1975 SC 244] wherein the Hon’ble Supreme Court observed as under:-

“However, private organizations or persons, as distinguished from government or semi-government agencies and functionaries cannot be regarded as persons performing functions in connection with the affairs of the Federation or a province simply for the reason that their activities happen to be regulated by laws made by the State. Accordingly, a join stock company, incorporated under the Companies Act, for the purpose of carrying on commercial or industrial activity for the benefit of its shareholders, cannot be regarded as a person performing State functions, just for the reason that its functioning is regulated by law or that the

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distribution of its manufactured products is subject to governmental control in the public interest. The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some exercise of sovereign or public power; whether the control of the organization vests in a substantial manner in the hands of Government; and whether the bulk of the funds is provided by the State. If these conditions are fulfilled, then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province; otherwise not.

10. According to above, an organization has to carry following characteristic in order to be called that such organization is performing functions in connection with the affairs of Federation;

- (i) The functions entrusted to the organization should involve some exercise of sovereign or public power,
- (ii) The Control of organization should in substantial manner vest in the hands of Government,
- (iii) A bulk of funds should be provided by the State to the organization in question.

When this test is applied in the present case, it emanates that the respondent-club being creation of the Ordinance has been made to fulfill objectives which are given in the Ordinance as follows:-

“ WHEREAS, the Islamabad Club was established as a social and residential Club for the use, relaxation, convenience and entertainment of the officers of the Federal Government and the members of the diplomatic corps stationed at Islamabad.”

The functions mentioned above, are primarily the functions of State and a civic responsibility of Federation towards its citizens while by virtue of the Ordinance Ibid respondent club is vested with power to take necessary steps for achievement of the objects as well as to allow and restrain the facilities to natural persons, therefore, the first condition with regard to exercise of public power is fulfilled.

11. Sections 5 & 6 of the Ordinance Ibid reflect that President of Pakistan is pattern of the Club and its administrator is a persona designata Grade-21 officer of Federal Government which shows that the second element of test laid down by the Hon'ble Supreme Court is also fulfilled and substantially and significantly the control of Organization lies with the government. The third element namely provision of funds by the state is reflected in excerpt from Website of Islamabad Club wherein it is mentioned as follows:-

“Due to various factors in Club persistently showed operating losses necessitating government subsidies to offset the losses. In 1978, through the Presidential Ordinance NO. XXXIII of 17<sup>th</sup> July, 1978, the Club ownership was resumed by the

Government and the Company was dissolved. The Club is now being run under the said Ordinance.”

This reflects that the Government has invariably taken upon itself to provide funds for the Club and had persistently provided for its finances, and in this manner the last condition mentioned in the test is also fulfilled. Resultantly it can be concluded that Islamabad Club is a person performing connection with the affairs of Federation and as such is amenable to Constitutional Jurisdiction.

12. The second objection with regard to maintainability hinges upon a claim by respondent that petitioner did not obtain membership of Islamabad Club. This claim has not been denied by the petitioner either through rejoinder or any positive assertion in the petition. Secondly, respondent Club has contended that no separate entity exists in shape of Islamabad Golf Club and they have placed bye-laws of the Club perusal whereof alongwith the Ordinance reveals that Club has developed a Golf section for facilitation of its members but no separate entity of such nature, as mentioned by the petitioner, exists. Consequently, petitioner being a non member of Islamabad Club does not retain any vested right to use its facilities and thus lacks *locus standi* to bring constitutional petition. Lastly, there is great deal of factual controversy involved in the matter as the respondent club has propounded default in payment of charges on the basis of byelaws but petitioner has denied the same which has inevitably given rise to factual controversy, therefore, it cannot be resolved without adducing pro and contra evidence which is not permissible in Constitutional Jurisdiction.

13. In view of above it is concluded that petition involves factual controversy and suffers from lack of locus standi, therefore, the same is not maintainable. Petition dismissed. No order as to costs.

(CHIEF JUSTICE)

Announced in Open Court, on this 15<sup>th</sup> day of December, 2015.

(CHIEF JUSTICE)

Approved for Reporting.

S. Akhtar