

JUDGMENT SHEET.

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

W.P. No. 2995/2019.

Muhammad Khakan

Versus

Secretary Cooperatives, Islamabad, etc.

Petitioner by: Malik Waheed Akhtar, Advocate.

Respondents by: Mr. Abdul Wahid Qureshi, Sh. Junaid Nadeem
and Sh. Muhammad Suleman, Advocates.
Mr. Naseem Ahmed Shah, Advocate.

Date of Decision: 21.08.2019.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the petitioner has assailed the order dated 31.07.2019, passed by Secretary Cooperative and order dated 22.07.2019, passed by Registrar Cooperative Societies alongwith order dated 08.07.2019, passed by Election Commission of Jammu Kashmir Cooperative Housing Society (JKCHS), whereby nomination papers filed by respondent No.4 Zia Ullah Shah against seat of Chairman JKCHS have been accepted.

2. Learned counsel for the petitioner contends that respondent No.4 is contractor by profession who was running business under the name and style of Scramble Security Services (Pvt) Ltd. and he provides security services to the JKCHS and as such he is permanently barred to contest the election against any of the post of managing/executive committee in terms of Rule 3(ii)(a) of the ICT Cooperative Societies (Managing Committees Election) Rules, 2014; that the forums below have not considered the rule position in its true perspective and nomination papers of respondent No.4 were rejected in the previous round of proceedings and the matter was reported as 2018 MLD 1869 (Zia Ullah Shah Vs. Muhammad Khaqan and 6 others).

3. Conversely, learned counsel for respondent No.4 contends that Election Commission as well as Registrar Cooperative and Secretary Cooperative Societies have already adjudicated upon the matter at length and as such the contract of Scramble Security Services (Pvt) Ltd. with JKCHS has already been expired and at present respondent No.4 is not providing any such services to the society, therefore, his case does not fall within the purview of Rule 3(ii)(a) of the Election Rules 2014; that respondent No.4 is ready to submit undertaking that he and any of his family member, brothers will not indulge in any kind of business with the society directly or indirectly or not through any other company, firm in which petitioner has any share.

4. Arguments heard, record perused.

5. Perusal of record reveals that respondent No.4 is contesting the election for the post of Chairman JKCHS in the upcoming election of the management committee whereby petitioner has filed petition on the ground that respondent No.4 was contractor and providing services to the JKCHS through his company i.e. Scramble Security Services (Pvt) Ltd. and as such he is not eligible to contest the election in terms of bar contained in the Rule 3(ii)(a) of Election Rules 2014.

6. I have gone through the scrutiny result of the Election Commission whereby they have considered all these aspects as well as rules position which reveals that case of respondent No.4 was rejected by this Court through reported case 2018 MLD 1869 and as such two years time referred in the bye-laws of the society has already been over. I have also gone through the concurrent findings of the forums below whereas Secretary Cooperative has given comprehensive decision in the following manner:-

I have heard the arguments of both parties and carefully perused the record, which shows that the petitioner has mainly objected on the nomination papers of the Respondent NO. 3 on two grounds. Firstly, that the Respondent No. 3 runs a security company which had been involved in the security business which the society which violates Rule 53 (2) (C) of the society and secondly, the membership of the Respondent No.3 has not

yet been approved by the AGM which bars the respondent to contest the election.

A careful perusal of the record shows that both the objections have already been answered in length by the election commission and learned registrar Rule 3(b) clearly states that any company which has carried out a business of profit with the society is not allowed to contest the election for 2 years. However, the cancellation of the agreement with the Scramble Security Services (Pvt) Ltd dated 31-05-2017 validate the fact that the time period of more than 2 years has already been passed, so this objection is no longer tenable. Secondly, the Respondent No 3 became a member of the society on the 02-06-2017 and mandatory period of 1 year has already passed. Though no AGM is held since then, which is a failure on account of the society and under such circumstances, the membership stands automatically confirmed as per Rule 7(1) of the bye-laws of JKCHS.

The learned Registrar has rightly appreciated the law on the subject and has reached to a just and right conclusion. There is no illegally or material irregularity in the impugned order, which may warrant the interference of this court in its revision jurisdiction.

7. The above referred reasons are self explanatory. Even otherwise, Rule 3(ii)(a) of Election Rules, 2014 is not clear as to whether the term contractor means the contractor of security services or of any other business. However, in order to settle this question relevant rules are reproduced as under:-

(ii) *No member shall be eligible to contest elections to become an office bearer of the managing committee who:*

- (a) *is practicing the profession of Real Estate e.g. professional Property Dealer, Contractor, Land / Property Developer.*
- (b) *acts for society for any honorarium or profit or salary or is a borrower of the society unless he has cleared his liability or has relinquished the position of for a period at least 2 years immediately preceding the schedule for the elections.*

8. The term used in the above referred rules is qualified with the provision of real estate, which covers the professional property dealers, contractor, land/property developers and as such the term contractor used in this case is related to similar type of business which deals with the immovable property,

construction of land whereas respondent No.4 who was admittedly running a business under the name and style of Scramble Security Services (Pvt) Ltd., who have their previous contract with JKCHS for provision of security services, although the same was cancelled on 31.05.2017 and as such period of two years has already been elapsed, therefore, no question of interference is made out in the instant petition, the orders passed by the forums below are in accordance with law, therefore, the same stands dismissed. However, respondent No.4 shall submit an undertaking as per his own commitment to the Election Commission as well as to the Secretary Cooperative Societies with assurance that he as well as ~~██████~~ his family members shall not indulge in any kind of business directly or indirectly, even through any other company or firm in which he or his family members have share with JKCHS in future as the same have conflict of interest and in case any such illegality comes on record, legal action would be taken against him, if he would be elected in the election.


(MOHSIN AKHTAR KAYANI)
JUDGE