

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2665/2019
Syed Naveed Raza Hussain

Versus

Chief Commissioner Islamabad and others

Date of Hearing:	29.07.2019
Petitioner by:	Mr. Asif Mumtaz Malik, Advocate
Respondents by:	Mr. Naseem Ahmed Shah, Advocate for respondents No.1 and 2. Mr. Najam uz Zaman, Advocate for respondent No.5.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Syed Naveed Raza Hussain, impugns the order dated 12.07.2019, passed by the Director General, Islamabad Capital Territory ("I.C.T."), partly allowing revision petition No.36/2019, filed under Section 64-A of the Cooperative Societies Act, 1925, by the petitioner and others against the order dated 28.06.2019, passed by the Deputy Registrar, Cooperative Societies, Islamabad. Vide the said order dated 28.06.2019, the Deputy Registrar, Cooperative Societies, Islamabad, dismissed the petitioner's appeal filed under Rule 16 of the I.C.T. Cooperative Societies (Managing Committees Election) Rules, 2014, against the order dated 30.05.2019, passed by the Election Commission, whereby the petitioner and others were held not to be qualified to contest in the elections to the Managing Committee of the Pak PWD Employees Cooperative Housing Society ("Pak PWD-E.C.H.S.")

2. The facts essential for the disposal of the instant petition are that on 27.04.2019, the Cooperative Societies Department, Islamabad published a notice, informing the general public that elections of the Managing Committee of the Pak PWD-E.C.H.S. were scheduled to be held on 03.07.2019. It is an admitted position that the said date of elections was subsequently postponed to 30.07.2019.

3. Paragraph 3 of the said public notice clearly provided *inter-alia* that any person who has not been sentenced/convicted of a criminal offence involving moral turpitude would be qualified to

contest the elections to the Managing Committee of the Pak PWD-E.C.H.S.

4. The petitioner filed his nomination papers to contest the elections for the post of the Secretary, Pak PWD-E.C.H.S. Upon the scrutiny of the nomination papers, the Election Commission, vide order dated 30.05.2019, rejected the petitioner's nomination papers and disqualified him from contesting the elections on the grounds that the petitioner had been involved in corrupt practices and embezzling a huge amount of the Society's funds as evident from the inquiry conducted by the Registrar Cooperative Societies; and that on 08.04.2006, the post of the Secretary occupied by the petitioner, had been superseded under Rule 48 of the Cooperative Societies Rules, 1927.

5. Aggrieved by the rejection of his nomination papers, the petitioner preferred an appeal before the Court of the Deputy Registrar, Cooperative Societies, I.C.T. Vide order dated 28.06.2019, the said appeal was dismissed.

6. The said order was assailed by the petitioner and others in writ petition No.2479/2019 before this Court. Vide order dated 11.07.2019, the said petition was disposed of with the direction to the revisional authority under Section 64-A of the Cooperative Societies Act, 1925 to treat the said petition as a revision petition and decide the same expeditiously and in accordance with the law. Furthermore, it was observed that *"in deciding the revision petition, it is expected that the revisional authority would ascertain as to whether any order in personam had at any stage been passed against the petitioners, which would disqualify them from participating in the elections"*.

7. The post-remand proceedings culminated in a detailed order dated 12.07.2019, passed by the Director General, I.C.T., whereby the decision to disqualify the petitioner from contesting the elections was upheld. For upholding the petitioner's disqualification for contesting the elections, the Director General, I.C.T. gave the following reasons:-

"...Record also reveals that Syed Naveed Raza is involved in embezzlement of society funds and an FIR is also registered against him. There are two inquiry reports under section 43 of

Cooperative Societies Act, 1925 are against Syed Naveed Raza, (Petitioner No.2) and the inquiry officers recommended recoveries from the Petitioner No.2 and if the nomination papers of Petitioner No.2 (Syed Naveed Raza) are accepted then the large number of members of society will face an irreparable loss. There is also an order of Registrar Cooperative Societies to recover the embezzled amount from Syed Naveed Raza.”

8. Furthermore, it was held that the petitioner was “*disallowed to contest the election because he is involved in a number of embezzlements in the funds of Society*”.

9. The said order dated 12.07.2019 to the extent of disallowing the petitioner from contesting the elections has been assailed in the instant writ petition.

10. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant writ petition, submitted that till date the petitioner has not been convicted or sentenced by any criminal Court for an offence involving moral turpitude; that the petitioner could have been disqualified only if he did not fulfill the requirements of Rule 53 of the Islamabad Cooperative Societies Rules, 2018; that the inquiry report dated 15.05.2013 of the Assistant Commissioner (Saddar) / Sub-Divisional Magistrate, I.C.T. cannot be equated with a sentence passed by a criminal Court so as to disqualify the petitioner from contesting the elections; that in the said report, it was recommended that an FIR be lodged against the petitioner; that the mere fact that FIR No.169/18, dated 24.03.2018 was registered under Sections 420, 468 and 471, P.P.C. against the petitioner and others would not *ipso facto* disqualify the petitioner from contesting the elections; that earlier the Federal Investigation Agency (“F.I.A.”), in its report dated 21.10.2015, had stated that no sufficient incriminating evidence had come on record to establish the allegations against the petitioner; that even in the written comments filed in writ petition No.540/2014, the F.I.A. had pleaded *inter-alia* that the inquiry against the petitioner had been closed because there was no incriminating evidence on the record against the petitioner; and that the earlier inquiry report dated 10.12.2012 had not mentioned anything adverse against the petitioner. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

11. On the other hand, learned counsel for respondents No.1 and 2 (Mr. Naseem Ahmed Shah, Advocate) submitted that a candidate could be disqualified from contesting elections if he was not eligible according to Rule 3 of the I.C.T. Cooperative Societies (Managing Committees Election) Rules, 2014 or Rule 53 of the Islamabad Cooperative Societies Rules, 2018; that till date the petitioner has not been sentenced to imprisonment by any criminal Court; and that in the report dated 15.05.2013, adverse observations were given against the petitioner and it was recommended that an FIR be lodged against him.

12. Learned counsel for respondent No.5 (Mr. Najam uz Zaman, Advocate) submitted that the petitioner was a miscreant and had been found involved in the embezzlement of the funds of Pak PWD-E.C.H.S.; that the said order dated 15.05.2013 had attained finality; that the said order dated 15.05.2013 had been challenged in writ petition No.3825/2013 before this Court; that this Court, in its order dated 23.04.2019, disposed of the said petition, but did not interfere with the said order dated 15.05.2013; that the appeal against the said order dated 15.05.2013 was decided, vide order dated 21.02.2019 passed by the Registrar Cooperative, Islamabad; that in the said order, it was observed that strict action be taken and an FIR be lodged against the petitioner; that the petitioner's revision petition under Section 64 of the Cooperative Societies Act, 1925 was disposed of, vide order dated 21.02.2019, wherein it was directed that the process of recovery of Rs.72,00,000/- from the petitioner be expedited; that vide order dated 23.04.2019, passed by this Court in writ petition No.3825/2013, it was directed that the orders of the Registrar Cooperative, Islamabad be implemented; and that if the petitioner is permitted to contest the elections, he will again commit the corrupt practices and would not pay the amount which he has been directed to return. Learned counsel for respondent No.5 prayed for the writ petition to be dismissed.

13. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

14. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 9 above, and need not be recapitulated.

15. In the advertisement dated 27.04.2019, it was clearly mentioned that those candidates who have not been sentenced/convicted for an offence involving moral turpitude would be eligible to contest the elections.

16. Rule 3 of the I.C.T. Cooperative Societies (Managing Committees Election) Rules, 2014 provide that the eligibility criteria for contesting elections shall be laid down for the election of the members of the Committee under Rule 53 of the Cooperative Societies Rules, 1927. Furthermore, it is provided that 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 the 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 for a period of at least two years immediately preceding the schedule for the elections, and (c) has ceased to be a member of the society under its registered bye-laws.

17. The Cooperative Societies Rules, 1927 were repealed by the Islamabad Cooperative Societies Rules, 2018, which were notified on 23.02.2018 and published in the official Gazette on 19.03.2018. Rule 53(1)(a)(i) of the latter Rules provides that no member of a society shall be on the committee elected under the bye-laws who has been sentenced by a criminal Court to imprisonment or whipping for an offence punishable with imprisonment for a term exceeding six months, or to transportation, such sentence not having been subsequently reversed or quashed if, and, so long as such sentence has not expired.

18. It is an admitted position that till date the petitioner has not been sentenced by any criminal Court to imprisonment or whipping for an offence punishable with imprisonment for a term exceeding six months, or transportation.

19. The inquiry report dated 15.05.2013 as well as the appellate order dated 21.02.2019 and revisional order show that land outside the area of the layout plan of Pak PWD-E.C.H.S. had been purchased through mutation No.859 and 902. It was found that an amount of Rs.72,00,000/- be recovered from the petitioner who was the Secretary of the said Society at the relevant time. The matter was referred to the Deputy Registrar Cooperatives with the direction to initiate recovery proceedings against the petitioner. It was also directed that an FIR be registered against the petitioner. Apparently in the execution proceedings, the petitioners' plot has been attached. It is to be appreciated that the relevant statute and the applicable rules do not make an order of recovery against a member of the Society, a disqualifying factor against a member from contesting an election.

20. Perusal of the impugned order dated 12.07.2019 shows that the grounds on which the petitioner was disqualified from contesting the election were that there were two inquiry reports under Section 43 of the Cooperative Societies Act, 1925 against him, and that the inquiry officers had recommended recoveries against him. It is my view that the findings against the petitioner in the inquiry reports cannot be equated with a sentence of imprisonment by a criminal Court against the petitioner so as to disqualify him from contesting the elections.

21. The disqualification on a member of a cooperative society registered under the Cooperative Societies Act, 1925 to contest an election is provided in the law i.e., Rule 53 of the Islamabad Cooperative Societies Rules, 2018 read with Rule 3 of the I.C.T. Cooperative Societies (Managing Committees Election) Rules, 2014. The disability on a member to contest an election imposed under the said Rules has to be construed very strictly. In the case of Ghazanfar Ali Vs. Appellate Authority/Additional District Judge, Sahiwal (PLD 2016 S.C. 151), it has been held that *"the qualifications and disqualifications imposed by law for a candidate to contest the election and even to hold office should be construed and applied strictly ... and a person can only be debarred from contesting elections or holding an office if the case falls squarely*

within the strict scope of the qualifications and disqualifications stipulated by law.”

22. Additionally, in the case of Muhammad Mujtaba Abdullah Vs. Appellate Authority/Additional Sessions Judge, Tehsil Liaquatpur, District Rahim Yar Khan (2016 SCMR 893), it has been held that *“election laws more particularly disqualification provisions to disenfranchising a candidate, thus depriving him of a valuable right of franchise guaranteed under the Constitution are to be strictly construed any ambiguity is to be resolved in favour of candidate who could be permitted to participate in the electoral process.”* Law to the said effect has also been laid down by the Division Bench of the Hon'ble Lahore High Court in the case of Muhammad Nasir Cheema Vs. Election Commission of Pakistan (PLD 2018 Lahore 784).

23. True, FIR No.169/18, dated 24.03.2018 has been registered under Sections 420, 468 and 471, P.P.C. against *inter-alia* the petitioner at Police Station Rawat, District Rawalpindi on the complaint of one Wazir Khan, but the mere registration of the said FIR is not enough to hold that the petitioner had been sentenced by a criminal Court. It is well settled that mere registration of an FIR against an accused nominated therein is not enough to hold that such an accused is guilty of the offence that is alleged against him. In the case of Haji Ghulam Hussain Vs. Returning Officer Zilla Council, Bahawalpur and others (1998 MLD 1948), it was held that mere involvement in an F.I.R. cannot form the basis of passing a judgment on the character of a person. Furthermore, it was held that *“qualification/disqualification referred to Articles 62 and 63 of the Constitution of Islamic Republic of Pakistan, 1973 cannot be proven or dis-proven by reference to an F.I.R. alone.”* Recently, in the case of Rehmatullah alias Pappu Vs. The State (2015 PCr.L.J. 1148), it has been held that *“mere registration of criminal cases is not sufficient to hold one as guilty because it is not the FIR which declares one to be culprit but it is the verdict of the Court of law only which could declare one as culprit/guilty because the basic principle of Administration of Criminal Justice is that accused is to be presumed innocent until found guilty”*.

24. In view of the above, the impugned order dated 12.07.2019 to the extent of holding that the petitioner is disallowed to contest the elections, is set-aside.

25. The above are the detailed reasons for the short order dated 29.07.2019, which is reproduced herein below:-

“For detailed reasons to be recorded later on, the instant writ petition is allowed and the petitioner shall be permitted to participate in the elections of the society scheduled to be held tomorrow i.e. 30.07.2019.”

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan

APPROVED FOR REPORTING

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