

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4636 of 2014

Nasir Azam

Versus

Federation of Pakistan through Secretary, Capital Administration
and Development Division and another

Date of Hearing: 18.02.2020

Petitioner by: Sardar Muhammad Ghazi, Advocate

Respondents by: Mr. Arshid Mahmood Kiyani, learned
Deputy Attorney-General
Mr. Wasim Abid, Advocate for respondent
No.2

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Nasir Azam, impugns the letter dated 30.09.2014 from the Islamabad Club, informing the petitioner's proposer about the Balloting Committee's decision not to elect the petitioner for membership. A copy of the said letter was sent to the petitioner.

2. Learned counsel for the petitioner submitted that the petitioner is a retired civil servant; that the petitioner had served as Deputy Secretary (BS-19); that the petitioner was eligible to become a member of the Islamabad Club; that Mrs. Natasha Adil had proposed the petitioner's name for membership; that vide letter dated 18.09.2014, the Islamabad Club requested Mrs. Natasha Adil to accompany the petitioner for a formal introduction with the Balloting Committee on 27.09.2014; that the Balloting Committee, in its meeting dated 27.09.2014, decided not to grant membership of Islamabad Club to the petitioner; and that vide impugned letter dated 30.09.2014, the petitioner's proposer was informed about the said decision of the Balloting Committee.

3. Learned counsel for the petitioner further submitted that the impugned letter dated 30.09.2014 is devoid of reasons; that the petitioner is a respectable person and the impugned letter has the effect of stigmatizing him; that the Islamabad Club has been established and is operating under the provisions of the Islamabad Club (Administration) Ordinance, 1978; that prior to the promulgation of the said Ordinance, Islamabad Club was running as a Company;

that the Administrator of the Islamabad Club is a Corporation sole; that the rules and byelaws of the Islamabad Club clearly provide that the ownership of the Islamabad Club vests in the Government; that from time to time, the Government has been paying subsidy to the Islamabad Club; that in the case of Ishaq Khan Khakwani Vs. Islamabad Club, the learned Single Bench of this Court has held that a writ petition against the Islamabad Club is maintainable; and that since the decision not to grant membership of the Islamabad Club was arbitrary and unlawful, the impugned letter dated 30.09.2014 is liable to be set aside. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the judgment dated 15.12.2015 passed by the learned Single Bench of this Court in writ petition No.2055/2015, titled "Ishaq Khan Khakwani Vs. Islamabad Club".

4. On the other hand, learned counsel for respondent No.2 raised a preliminary objection to the maintainability of the instant petition on the ground that the learned Division Bench of this Court in the case of Administrator, Islamabad Club Vs. Mrs. B. Ayisha Mustafa (PLD 2019 Islamabad 331) had held that a writ petition against Islamabad Club was not maintainable. Furthermore, he submitted that the petitioner had the option for reapplying for the membership of the Islamabad club six months after the decision of the Balloting Committee not to grant membership to him; that in the impugned letter dated 30.09.2014, it was also written that the petitioner's name could be proposed for membership again after a period of six months; that Rule No.4(8)(a) provided *inter alia* that no candidate, after having failed to secure election, shall be brought forward again for election for a period of six months from the date of the completion of the last election; that it was also provided that a candidate who had failed to secure election twice shall not be reconsidered for membership; that there is nothing stopping the petitioner for reapplying for the membership; that the election of a candidate is by ballot; that the rules clearly provide that a candidate shall not be declared elected unless a minimum four affirmative votes are cast in his favour; that the rules and/or the law does not require a member of a Balloting

Committee to give reasons for voting for or against a candidate; and that the decision of the Balloting Committee not to elect the petitioner for membership does not suffer from any legal infirmity. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed.

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

6. In first instance, I propose to decide the objection taken by the learned counsel for respondent No.2 to the maintainability of this petition.

7. The learned Division Bench of this Court in the case of Administrator, Islamabad Club Vs. B. Ayisha Mustafa (supra), held in unequivocal terms that a writ petition against the Islamabad Club was not maintainable. In the said case, the decision of the Club not to grant membership to a candidate was in issue. Paragraph 15 of the said judgment is reproduced herein below:-

"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 v. Itrat Sajjad Khan and 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 v. Muhammad Shoab Qureshi" (PLD 1984 SC 170) and "Muhammad Zaman and others v. 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 and 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."

8. Since the said judgment of the learned Division Bench of this Court is binding on this Court, therefore, the objection taken by respondent No.2 to the maintainability of this petition succeeds, and consequently, the instant petition is dismissed as not maintainable.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON 25-02-2020

(JUDGE)

*Qamar Khan**