

## **JUDGMENT SHEET**

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

#### **Civil Revision No.92/2018**

*(Zia Ullah Shah v. Muhammad Khaqan, etc.)*

Petitioner by: M/s Muhammad Munir Paracha, Nauman Munir Paracha, and Abdul Wahid Qureshi, Advocates.

Respondents by: Sheikh Muhammad Suleman and Sheikh Junaid Nadeem, Advocates for Respondent No.1.  
Mr. Abdul Hameed Khan Kundi, Advocate for Respondent No.2.  
Mr. Naseem Ahmad Shah, Advocate for Respondents No.3 to 7.

#### **Civil Revision No.93/2018**

*(Abdul Majeed Chohan v. Khalid Bashir, etc.)*

Petitioner by: M/s Muhammad Munir Paracha, Nauman Munir Paracha, and Abdul Wahid Qureshi, Advocates.

Respondents by: Sheikh Muhammad Suleman and Sheikh Junaid Nadeem, Advocates for Respondent No.1.  
Mr. Abdul Hameed Khan Kundi, Advocate for Respondent No.2.  
Mr. Naseem Ahmad Shah, Advocate for Respondents No.3 to 6.

#### **Civil Revision No.94/2018**

*(Naseem Anjum v. Muhammad Khaqan, etc.)*

Petitioner by: M/s Muhammad Munir Paracha, Nauman Munir Paracha, and Abdul Wahid Qureshi, Advocates.

Respondents by: Sheikh Muhammad Suleman and Sheikh Junaid Nadeem, Advocates for Respondent No.1.  
Mr. Abdul Hameed Khan Kundi, Advocate for Respondent No.2.  
Mr. Naseem Ahmad Shah, Advocate for Respondents No.3 to 6.

**Civil Revision No.95/2018**

*(J&K Cooperative Housing Society v. Muhammad Kaleem Ullah, etc.)*

Petitioner by: M/s Muhammad Munir Paracha, Nauman Munir Paracha, and Abdul Wahid Qureshi, Advocates.

Respondents by: Sheikh Muhammad Suleman and Sheikh Junaid Nadeem, Advocates for Respondent No.1.  
Mr. Naseem Ahmad Shah, Advocate for Respondents No.2 to 4.

**Writ Petition No.1085/2018**

*(Naseem Anjum v. Registrar Cooperative Societies, etc.)*

Petitioner by: Mr. Abdul Wahid Qureshi, Advocate.

Respondents by: Mr. Naseem Ahmad Shah, Advocate for Respondents No.1 to 3.  
Mr. Abdul Hameed Khan Kundi, Advocate for J&KCHS.

**Writ Petition No.1086/2018**

*(Muhammad Ayyaz Khan v. Election Commission J&KCHS, etc.)*

Petitioner by: Mr. Muhammad Arbab Alam Abbasi, Advocate.

Respondents by: Mr. Naseem Ahmad Shah, Advocate for Respondent No.2.  
Mr. Abdul Hameed Khan Kundi and Mr. Abdul Wahid Qureshi, Advocates for J&KCHS.

**Writ Petition No.1345/2018**

*(Manzoor Ahmad Kiani v. Registrar Cooperative Societies, etc.)*

Petitioner by: Malik Waheed Akhtar, Advocate.

Respondents by: Mr. Naseem Ahmad Shah, Advocate.

**Writ Petition No.1420/2018**

*(Muhammad Shahid Mumtaz v. Registrar Cooperative Societies, Islamabad, etc.)*

Petitioner by: Mr. Riaz Hanif Rahi, Advocate.

Respondents by: Mr. Naseem Ahmad Shah, Advocate for Respondents No.1 to 7.  
Mr. Abdul Wahid Qureshi, Advocates for Respondent No.8/J&KCHS.

**Writ Petition No.1423/2018**  
(*Muhammad Ayyaz Khan v. Ehsan Elahi, etc.*)

Petitioner by: M/s Muhammad Shoaib Shaheen and  
Muhammad Umair Baloch, Advocates.

Respondents by: Mr. Malik Waheed Akhtar, Advocate for  
Respondent No.1.  
Mr. Naseem Ahmad Shah, Advocate for  
Respondents No.2 & 3.  
Mr. Abdul Wahid Qureshi, Advocates for  
Respondent No.4/J&KCHS.

**Writ Petition No.1486/2018**  
(*Shahzad Ahmad Gondal v. Registrar CHS, Islamabad, etc.*)

Petitioner by: Ch. Naseer Ahmad Gujjar, Advocate.

Respondents by: Mr. Naseem Ahmad Shah, Advocate for  
Respondent No.1.

**Writ Petition No.1562/2018**  
(*Brig (R) Nusrat Ullah v. Election Commissioner/J&CHS, etc.*)

Petitioner by: Mr. Muhammad Arbab Alam Abbasi, Advocate.

Respondents by: Mr. Abdul Wahid Qureshi, Advocates for  
Respondent No.2.  
Mr. Abdul Hameed Khan Kundi, Advocate for  
Respondent No.3/J&KCHS.  
Mr. Naseem Ahmad Shah, Advocate for  
Respondents No.4

Date of Hearing: 09.05.2018.

**Writ Petition No.1984/2018**  
(*Muhammad Shahid Mumtaz v. Registrar Cooperative Societies, etc.*)

Petitioner by: Mr. Riaz Hanif Rahi, Advocate.

Respondents by: Mr. Naseem Ahmad Shah, Advocate for  
Respondents No.1 to 7.  
Mr. Abdul Wahid Qureshi, Advocates for  
Respondent No.8/J&KCHS.

Date of Hearing: 22.05.2018

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:-** Through this common judgment,  
I intend to decide the captioned civil revisions and writ petitions as  
common questions of law and facts are involved in these cases.

2. Brief facts as referred in the captioned cases are that:

- I. The petitioner through W.P. No.1085/2018 (Naseem Anjum v. Registrar, Cooperative Societies, Islamabad, etc.) has prayed for direction to be issued to respondents to proceed strictly in accordance with the rescheduled advertisement dated 16.03.2018 whereby the new date of election of Jammu & Kashmir Cooperative Housing Society, Islamabad has been announced for 24.03.2018.
- II. The petitioner through W.P. No.1086/2018 (Muhammad Ayaz Khan v. Election Commission, J&KCHS) has assailed the revised schedule dated 24.03.2018 whereby new election date for the Jammu & Kashmir Cooperative Housing Society, Islamabad has been announced and published in Daily Jang dated 16.03.2018.
- III. The petitioner through W.P. No.1345/2018 (Manzoor Ahmad Kiani v. Registrar Cooperative Societies, etc.) has prayed for direction of issuance of writ of mandamus and direction to respondent to resume the election process of Managing Committee of the Jammu & Kashmir Cooperative Housing Society forthwith strictly in accordance with ICT Cooperative Societies (Managing Committee Election) Rules, 2014. The petitioner further seeks direction to allow those candidates whose nomination papers have already been accepted and have been declared qualified to contest the election and Election Commission may not be allowed to seek fresh nomination papers.
- IV. The petitioner through W.P. No.1420/2018 (Muhammad Shahid Mumtaz v. Registrar Cooperative Societies

Department, etc.) has challenged the election schedule published on 23.01.2018 mainly on the ground that Chief Commissioner, ICT, Islamabad has to issue model schedule under Rule 6(iii) of the ICT Cooperative Societies (Managing Committee Election) Rules, 2014 for guidance and implementation of the Election and at the same time Muhammad Shahid Mumtaz/petitioner further prayed for direction for issuance of new schedule under the ICT Cooperative Societies (Managing Committee Election) Rules, 2014 along with finalization of voters list.

V. The petitioner through W.P. No.1423/2018 (Muhammad Ayaz Khan v. Ehsan Elahi, etc.) has assailed the order dated 11.04.2018 whereby appeal under Rule 16 of the ICT Cooperative Societies (Managing Committee Election) Rules, 2014 has been dismissed which was filed against the order of Election Commissioner whereby nomination papers of petitioner have been rejected by the Election Commission.

VI. The petitioner through W.P. No.1486/2018 (Shahzad Ahmad Gondal v. Registrar Cooperative Societies, etc.) has assailed the concurrent findings of the Registrar Cooperative Societies as well as Election Commissioner whereby the nomination papers of petitioner have been rejected vide order dated 11.04.2018 and 16.02.2018, respectively, on the ground that petitioner is carrying real estate business which is not permissible under the By-laws for any candidate to participate in the election of the 19<sup>th</sup> Committee of the Society.

VII. The petitioner through W.P. No.1562/2018 (Brig (R) Nusrat Ullah vs. Election Commissioner/J&KCHS), has assailed the

order dated 16.04.2018 passed by the Deputy Registrar Cooperative Societies (Exercising Powers of Registrar Cooperative Societies) Islamabad in which Zia Ullah Shah/respondent No.2 was allowed to contest the election of the Jammu & Kashmir Cooperative Housing Society by the Election Committee vide order dated 16.02.2018 in the scrutiny of nomination papers and the said order has been maintained by the Registrar.

VIII. The petitioner through W.P. No.1984/2018 (Muhammad Shahid Mumtaz v. Registrar Cooperative Societies, etc.) has challenged the notification dated 03.01.2018 challenging the appointment of Member Election Commission and further prayed for direction to the Election Commissioner to prepare the notified voters list in accordance with the uniform criteria for all societies under Order No.14/CR/ICT/B dated 03.01.2018 whereby the objections have not been entertained within the timeframe.

IX. The petitioner through C.R. No.92/2018 (Zia Ullah Shah v. Muhammad Khaqan, etc.) has assailed the order dated 20.03.2018 passed by the learned Additional District Judge (West) Islamabad and 12.03.2018 passed by the learned Civil Judge, 1<sup>st</sup> Class, Islamabad whereby application under Order XXXIX Rule 1&2 CPC has been decided. As per the instant civil revision, respondent No.1/Muhammad Khaqan filed a suit for declaration, mandatory and permanent injunction to the fact that Defendant No.6/present petitioner (Zia Ullah Shah) is not eligible to contest the election of Jammu & Kashmir Cooperative Housing Society and claims

disqualification, whereas the learned Trial Court has passed the interim order of restraining the petitioner from contesting the election of society whereas present petitioner filed an appeal which was dismissed by the learned Additional District Judge (West), Islamabad vide order dated 20.03.2018. The main allegation against the Zia Ullah Shah/petitioner is that he is ineligible to contest the election as per Rule 29, Sub-Rule 5 & 6 of the By-laws of the Jammu & Kashmir Cooperative Housing Society whereby a member of Managing Committee cease to hold office if he is directly or indirectly involved in any employment or agreement with the Society, whereas Zia Ullah Shah/petitioner is owing a security company under the name and style of "Scramble Security Services Pvt. Ltd." and providing security services to the Society. The second ground raised against Zia Ullah Shah/petitioner is regarding his membership vide Membership No.37574 which was obtained on 02.06.2017 and it requires one year period to participate in the election of the Society under the By-laws of the Cooperative Societies Act, 1925 whereas the membership of Zia Ullah Shah/petitioner has not been approved by the AGM.

- X. The petitioner through C.R. No.93/2018 (Abdul Majeed Chohan vs. Khalid Bashir) has assailed the order dated 20.03.2018 passed by learned Additional District Judge-III, (West), Islamabad whereby the appeal was dismissed against the interim order passed by the learned Trial Court under Order XXXIX Rule 1&2 CPC dated 03.03.2018 wherein interim status quo order was passed against Abdul Majeed

Chohan/petitioner from participating the election which was scheduled to be held on 17.03.2018.

XI. The petitioner through C.R. No.94/2018 (Naseem Anjum v. Muhammad Khaqan, etc.) has assailed the order dated 20.03.2018 passed by the learned Additional District Judge (West), Islamabad whereby application under Order XXXIX Rule 1 & 2 CPC has been remanded to the learned Trial Court for disposal of the said application without suspending the interim order dated 03.03.2018 whereby present petitioner has been restrained from participating in the election process which was to be held on 17.03.2018.

XII. The petitioner through C.R. No.95/2018 (Jammu & Kashmir Cooperative Housing Society v. Muhammad Kaleem Ullah, etc.) has assailed the order dated 20.03.2018 passed by the learned Additional District Judge-III (West), Islamabad whereby appeal of petitioner filed against the order dated 10.03.2018 passed under Order XXXIX Rule 1&2 CPC by the learned Civil Judge, (West) Islamabad was dismissed whereby petitioner was restrained to hold the election on the new date of election i.e. 24.03.2018 as advertized in the Daily Jang by the Additional Deputy Commissioner (East)/Election Commissioner.

3. The above referred matters have been jointly argued by the learned counsels before this Court and the respondents were heard in detail along with the record. In order to simplify the proceedings, it is necessary to categorize the questions raised in the captioned petitions whereby the *first category* of the cases is relating to nomination and scrutiny of the nomination papers by the Election Commission and the orders passed by



the appellate authority i.e. Deputy Registrar Cooperative Societies (Exercising the Powers of Registrar Cooperative Societies). The *second category* of the petitions is related to the election schedule issued by the Election Commissioner on different occasions as well as non-issuance of certified voters list in accordance with the ICT Cooperative Societies (Managing Committee Election) Rules, 2014 and question relating to eligibility of the Election Commission Members. Whereas, the *third category* pertains to civil revisions arising out of civil suits in which the petitioners have challenged the candidature of the candidates and seeking restraining order on the ground that the respondents have been disqualified due to certain ineligibilities which have not been looked into by the Election Commissioner as well as by the appellate forum and as such restraining orders have been passed by the Civil Courts which have been assailed through instant Civil Revisions before the High Court in terms of Section 115 CPC.

4. I have heard the learned counsels at length while considering the By-laws of the Jammu & Kashmir Cooperative Housing Society, the election schedule, scrutiny results of the candidates, decisions of the appellate authority under ICT Cooperative Societies Rules, 2014 r/w Cooperative Societies Act, 1925 and Cooperative Societies Rules, 1927, therefore, the necessary arguments are referred in the later portion of the instant judgment as and when required to answer the particular question raised in the captioned petitions.

5. Arguments heard, record perused.

6. From the perusal of record it has been observed that the election schedule for the election of Managing Committee of the Jammu & Kashmir Cooperative Housing Society, Islamabad was advertised in the Daily Jang on 23.01.2018 and last date for filing of the nomination papers was fixed on

06.02.2018 whereby 87 candidates had applied for different posts comprising of Chairman, Senior Vice Chairman, Vice Chairman, Secretary, Joint Secretary, Treasurer and Executive Members. The nomination papers of 87 contesting candidates have been examined by the Election Commission comprising of Additional Deputy Commissioner (East) as Chairman Election Commission along with two other members i.e. Nadeem Ahmad and Saeed Ahmad whereby the contesting candidates have been heard in-person by the Election Commission and their objections have been decided on the basis of short order. As per the decision of the Election Commission on the scrutiny of nomination papers dated 16.02.2018, few of the petitioners whose candidatures have been rejected have filed their appeals before the appellate forum i.e. Deputy Registrar Cooperative Societies (Exercising the Powers of Registrar Cooperative Societies), Islamabad in terms of ICT Cooperative Societies (Managing Committee Election) Rules, 2014. After the dismissal of the appeals, the captioned writ petitions have been filed before this Court.

7. Shahzad Ahmad Gondal filed the captioned W.P. No.1486/2018 as his nomination papers have been rejected on the objection of Malik Muhammad Saleem and Muhammad Bilal Qureshi, objectors, mainly on the ground that Shahzad Ahmad Gondal is carrying the business of real estate in residential area under the name and style of "True Man Associates" whereby the online taxpayer verification record has been provided to the Election Commission which reveals two businesses against Shahzad Ahmad Gondal i.e. True Man Associates and True Man Traders. Whereas, Shahzad Ahmad Gondal/petitioner took the stance that he has left the business of real estate and he is dealing with the whole sale and retail trade, repair of motor vehicles and motorcycles/retail sale in non-specialized stores. There are two taxpayer online verification results

brought on record and both belongs to Shahzad Ahmad Gondal with different dates i.e. 09.02.2018 and 15.02.2018. I have gone through the relevant Rule 3(ii)(a) of the ICT Cooperative Societies (Managing Committee Election) Rules, 2014 whereby it has specifically been referred as under:

**3: QUALIFICATION AND DISQUALIFICATION FOR CONTESTING THE ELECTION:**

- i.) *Eligibility criteria for contesting elections shall be as laid down for election of the members of the Committee under Rule 53 of the Cooperative Societies Rules, 1927.*
- 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 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 2 years immediately preceding the schedule for the elections.*
  - c) *Has ceased to be a member of the Society under its registered bye-laws.*

The above referred rule places an embargo upon any person from contesting the election if he is dealing in the real estate as property dealer, contractor, land/property developer. I have also gone through the impugned orders and records of the rival candidates placed on record against the nomination papers of Shahzad Ahmad Gondal whereby in reply to the objection he has filed his affidavit dated 15.02.2018 before the Election Commission and contended that he is not engaged in any property business for last two years but surprisingly he has not uttered a single word against the taxpayer online verification through which his business under the name and style of True Man Associates has been referred. The petitioner might be dealing in two kind of business under the name of True Man Associates and True Man Traders but at this stage his contention could not be believed solely on his affidavit to rebut the taxpayer verification certificate, even

otherwise he acknowledged that he was running the business under the name of True Man Associates two years ago and as such this factual aspect which has already been adjudicated upon by the Election Commission as well as by the appellate forum, this Court could not interfere into the concurrent findings as the contention raised by the petitioner is based upon disputed question of facts which have already been resolved by the forums below and petitioner could not discharge his onus by simply placing an affidavit, even otherwise, the status of affidavit has no value unless its facts and deponent have gone through the test of cross-examination before any authority, therefore, forums below have not rightly placed reliance upon the affidavit, hence, W.P. No.1486/2018 (Shahzad Ahmad Gondal v. Registrar Cooperative Societies, etc.) is hereby *dismissed*.

8. Muhammad Ayyaz Khan has filed the captioned W.P. No.1423/2018 and assailed the order dated 16.02.2018 of the Election Commission whereby his nomination papers have been rejected on the objection of Shujaat Hussain and Ehsan Elahi on the allegation that Muhammad Ayyaz Khan/petitioner, candidate for Secretary, is running the office of property dealer under the name of Pak Gulf Marketing as shown in the tax return. The order was further upheld by the appellate forum vide order dated 11.04.2018. The petitioner has denied the allegation of dealing in real estate business. The above referred Rule 3(ii)(a) has again been applied in this case whereby Muhammad Ayyaz Khan/petitioner contended that a proper evidence has to be brought on record and he could not be disqualified on statement of witness on oath whereas the entire evidence is hearsay which is not admissible in the eye of law. From the perusal of record, it appears that the appellate authority also declared that the Pak Gulf Marketing, in violation of CDA By-laws, is carrying its business activities in the

residential area and Muhammad Ayyaz Khan/petitioner is showing the business in the tax record. I have gone through the taxpayer online verification system document dated 14.02.2018 placed on record in which the principal business activity has been referred as whole sale and retail trade, repair of motor vehicles and motorcycles/retail sale in non-specialized stores, however both the forums below declared petitioner as renowned property dealer and as such respondent No.1 has brought different advertisements of Pak Gulf Marketing wherein Sardar Ayyaz Khan has given his picture along with his mobile numbers with the credentials of sales and purchase of residential and commercial plots in Sector G-15, Jammu & Kashmir Cooperative Housing Society, even the Pak Gulf Marketing has further been qualified with the term Real Estate Advisors and Investment Consultants as referred in the public advertisement with the pictures of Muhammad Ayyaz Khan. This occurrence further strengthens the contention of respondent No.1 although affidavit has been filed by Malik Qammar Abbas Khan to prove the contention that Muhammad Ayyaz Khan is not a professional property dealer but in my humble view the affidavit could not be considered as valid piece of evidence at this stage as the opportunity of cross-examination was not provided, however the attached documents whereby Muhammad Ayyaz Khan claims to be a real estate agent justify the contention of respondent No.1 although a certificate from Islamabad Estate Agents Associations and rent agreement has been placed on record to the extent of Pak Gulf Marketing which is allegedly run and managed by Shahid Mumtaz, but in my humble view the said contention was never raised before the forums below, therefore, the certificate of Islamabad Real Estate Agents Associations as well as rent agreement have no value to be considered at this stage. The pictures and posters have not been denied by

the petitioner whereby he was declared property dealer/advisor and he represented himself before general public by declaring his status as property advisor/real estate agent. Resultantly, the captioned W.P. No.1423/2018 (Muhammad Ayyaz Khan v. Ehsan Elahi, etc.) is **dismissed** as such petitioner is disqualified to participate in the upcoming election.

9. Brig. R. Nusrat Ullah filed the captioned W.P. No.1562/2017, who is a candidate for Chairman, has objected the nomination of respondent No.2/Zia Ullah Shah mainly on the ground that Zia Ullah Shah is running a company under the name of Scramble Security Services Pvt. Ltd. vide FBR Reference No.2053203-2 and providing security services to the Jammu & Kashmir Cooperative Housing Society since 26.12.2016 against which he is getting direct benefits from the Society which is a violation of the By-laws of the Jammu & Kashmir Cooperative Housing Society wherein Rule 29 imposes a restriction upon members of Managing Committee to hold the office. In order to clarify the proposition, the relevant rule is reproduced as under:

29. *A member of a Managing Committee shall cease to hold office if he:-*
- 1) ...
  - 2) ...
  - 3) ...
  - 4) ...
  - 5) *Is directly or indirectly involved in any employment or agreement with the Society.*
  - 6) *Personally does any such business directly or indirectly as is stated in the objects of society or is involved in it in any way e.g. professional Property Dealer, Contractor, etc.*

The above referred rule places an embargo upon the member of Managing Committee who is directly or indirectly involved in any employment of Society or doing any business directly or indirectly, whereas respondent No.2/Zia Ullah Shah is admittedly in agreement with the Society for provision of security services and as such the tax record of the Jammu &

Kashmir Cooperative Housing Society clearly reveals that different payments have been made to the Scramble Security Pvt. Ltd. in the following manner:

Date	Payment
18.05.2017	Rs.2,683,555/-
19.06.2017	Rs. 2,917,835/-
23.06.2017	Rs.3,056,195/-
14.04.2017	Rs.2,566,500/-
21.03.2017	Rs.2,546,000/-
21.02.2017	Rs.1,277,550/-

Even otherwise, the tax return filed by Zia Ullah Shah on 31.10.2017 confirms his position in the business of security company under the name of Scramble Security Pvt. Ltd. whereas the last taxpayer online verification document further confirms the said position vide certificate dated 18.02.2018, although Zia Ullah Shah produced a certificate, which is issued by Abdul Latif Qureshi, Secretary, whereby security services contract has been cancelled w.e.f. 31.05.2017, but surprisingly the said certificate is to the extent of Sergeant Security System and not meant for Scramble Security Pvt. Ltd., therefore, this certificate has no worth in favour of Zia Ullah Shah. I have also gone through the order passed by the Election Commission which is as under:

*“Zia Ullah Shah is allowed to contest election of Society with the condition that he shall give an affidavit within three days to the effect that he has no contract with the society.”*

The said order has further been upheld by the Deputy Registrar Cooperative Societies while hearing the appeal. However, from the perusal of record it has been observed that both these orders have been passed without observing legal requirements and as such permission granted by Election Commission to Zia Ullah Shah to contest the election subject to give an affidavit is not admissible under any stretch of imagination. Even

otherwise, if such practices are allowed, it will damage the entire structure of the society By-laws and all those individuals who have vested interest entered into arena which will further damage the affairs of the Society and as such interest of the members have been prejudiced. Neither the Election Commission nor the appellate authority have justified the grant of permission on the basis of affidavit, whereas the status of affidavit in this case is based upon future event, which is conditional but in my humble view the Election Commission has to give reasons for such permission, especially when permission amounts to bypassing the By-laws of the Society which is prejudicial to the interest of the Society, even otherwise, the order does not qualify the test of fairness, reasonability, and legal justification, therefore, the nomination papers to that extent is rejected. The other ground which has been discussed by the appellate authority in order dated 16.04.2018 to the consideration of case of Zia Ullah Shah being a General Member of the Society, who become the member of Society in January, 2017 and his name has already been referred in the voters list but surprisingly the appellate forum has not considered the By-laws of the Society where Rule 7(1) came into play, which is as under:

*"7. (1) Members shall be admitted after selection by the Managing Committee subject to confirmation at a General Meeting. Confirmation of new member must be put up in the next General Meeting. In case failure to put up the membership will stand automatically confirmed after one year."*

In view of above referred rule, no one can become the member unless his name is confirmed in the Annual General Meeting, however it is admitted position that Zia Ullah Shah got membership of the Jammu & Kashmir Cooperative Housing Society on 02.06.2017 whereas the last Annual General Meeting was held on 04.09.2016, therefore, the completion of one year has yet to take effect, therefore, Zia Ullah Shah is disqualified on this score alone, hence, this Court is fully convinced that Zia Ullah



Shah/respondent No.2 is not qualified to contest the election and as such the captioned W.P. No.1562/2018 (Nusrat Ullah vs. Election Commissioner/J&KCHS) is allowed and impugned orders dated 16.02.2018 and 16.04.2018 passed by Election Commission and the appellate authority, respectively, to the extent of Zia Ullah Shah, are hereby set-aside having no legal effect.

10. The second category of cases, which contains W.P. No.1085/2018, W.P. No.1086/2018, W.P. No.1345/2018, W.P. No.1420/2018, and W.P. No.1984/2018, have been filed for the common relief wherein the petitioners have challenged the election schedule and claim that election to be held free, fair and on the fixed date. In addition to the said claim, one of the petitioner also challenged the question of voters list as the same was not prepared as notified in the ICT Cooperative Societies (Managing Committee Election) Rules, 2014, therefore, in order to answer the question, this Court has gone through the question of preparation of voters list at the first instance, whereby as per Rule 2(j) of the ICT Cooperative Societies (Managing Committee Election) Rules, 2014, a person is qualified to be a voter who fulfills the qualification of a voter prescribed under these rules and is eligible, under these rules, to cast vote in the election with reference to Rule 4 of the Rules, whereas certain duties have been imposed on the Election Commission which is as under:

**6. Election Commission.**

- i) *An Election Commission shall be constituted by the Authority to hold election of the Committee at least 90 days prior to the expiry of the term of the existing Managing Committee. It shall consist of an Election Commissioner and two members from amongst the members of the Society other than the existing office bearers of the Society and the candidate contesting the election and shall act under the direction of the Election Commissioner in all matters relating to the election.*

**Explanation:**

- (a) *For the Societies where the term of Managing Committee has expired or is expiring within a period less than 90 days from the date of commencement of these Rules, the Election Commission shall be notified within 15 days after commencement of these rules.*
- (b) *If a member of the Election Commission opts to contest the election and files his nomination papers OR otherwise declines from the membership of the Commission he shall immediately cease to be a member of the Election Commission in which case any other member of the Society shall be substituted in his place by the Authority.*
- ii) *The Election Commission shall make all necessary arrangements for the election.*
- iii) *The Election Commission shall convey the election schedule along with instructions to all the members of the Society through a general circular to be delivered by Registered Post A.D and through a National Daily (Newspaper) of wide circulation, at least 60 days before the expiry of the term of the Committee of the Society. The schedule shall specify all details relating to the election (Annex-A 1-3) and the vacancies of the member of the Managing Committee to be filled through the elections.*
- iv) *It shall be the duty of the committee of the Society to provide the original/attested record of its membership to the Circle Registrar 15 days before the expiry of its term.*
- v) *Election Commission shall prepare and notify a list of the eligible voters for the election within 10 days of publication of election schedule of the Society.*

The above referred provision placed statutory duties upon the Election Commission to make all necessary arrangements for the election and Rule 6(v) has put a specific obligation upon Election Commission to notify a list of eligible voters of election within 10 days of publication of election schedule of the Society. However, in this case the voters list has not been notified despite the issuance of election schedule within 10 days, therefore, it amounts to a definite violation of the rules which has not been denied by the Election Commission before this Court and as such a number of objections have been raised upon the voters list but the same have not been

dealt accordingly. I have also gone through the attached voters list which provides the following details:

Sr.No.	Ms.No.	Name. Father Name & Address	CNIC No.	Plot No.	Block/Mini Mkt/Cat.	Plot Size	Scheme
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Whereas, the ICT Cooperative Societies (Managing Committee Election) Rules, 2014 provides a different requirement, especially the prescribed payment of plot as well as default, if any, as referred in Rule 3(ii)(b) for candidates and Rule 6(v) for the voters and said information has not been reflected in the instant voters list. Similarly, the election schedule published in the newspaper also reveals:

"ووٹ ڈالنے کی اہلیت:

ممبر سوسائٹی جس نے پلاٹ کی مقرر کردہ قیمت جمع کروائی ہو، وہی انتخابات میں ووٹ ڈال سکتا ہے۔ نیز سوسائٹی ممبران کیلئے ثبوت کے طور پر نادرا کا اصل قومی شناختی کارڈ اور اصل ممبر سلیپ / اصل الاٹمنٹ لیٹر ہمراہ لانا لازمی ہے۔

The above referred position of rules as well as the eligibility of voters provided in the election schedule gives a precise impression that a member of Society who has paid all the dues is eligible to vote and his name has to be reflected in the voters list with his credentials, therefore, any voters list which lacks the information of payments or dues clearance is not a valid voters list. Hence, in order to resolve the controversy once and for all, the Registrar Cooperative Societies is directed to pass direction to all the societies working in the ICT to the following effect:

- Every General Secretary of the Society shall prepare the default list bi-annually and shall notify the same in the Society office at least six months prior to the expiry of the tenure of the Managing Committee.
- The General Secretary shall inform all the members whose installments/dues of the Society have not been paid through telephonic mode, email, WhatsApp, registered post A.D. or any other mechanism for clearance of the dues before the expiry of the tenure.

- iii. The General Secretary is responsible to hand over the details of members:
- a) Name, parentage, and address of the members;
  - b) CNIC;
  - c) Plot number/membership number; and
  - d) Default of the member, if any, to the Election Commission at the time of appointment of Election Commissioner and as such no further amendment could be made in the said details. However, in case of non-submission of record to Election Commission, Registrar Cooperative Societies shall take action against the General Secretary under the law.
- iv. The Election Commission shall notify voters list within 10 days of the issuance of election schedule as prescribed in the ICT Cooperative Societies (Managing Committee Election) Rules, 2014 and entertain the objections of the voters list and shall decide the same on day to day basis and in case the voters list has not been notified by the Election Commission in a proper manner, the election schedule stand suspended having no effect unless the list has been notified.
- v. Any voters or person aggrieved with the orders of the Election Commission may exercise the appropriate remedy under the ICT Cooperative Societies (Managing Committee Election) Rules, 2014, however if the appellate authority pass any order to the extent of new voters or deletion of any voter the same shall be given in a certified manner to the Election Commission under the seal of appellate authority, however this order can only be entertained having a legal effect till the date of polling and such persons can cast their vote on the basis of decision given in such manner.

vi. In case election has been postponed for any reason by the competent authority, the new date shall be announced within period of 15 days unless there is any other legal impediment or the delay has been caused due to non preparation of the voters list unless the same has been notified.

11. In view of above background, the Election Commission is directed to notify the new election date on the basis of previous nomination papers and notified voters list within the period of 30 days with the direction to conduct the election on the said notified date by all means, therefore, W.P. No.1085/2018 (Naseem Anjum vs. Registrar Cooperative Societies, etc.), W.P. No.1086/2018 (Muhammad Ayaz Khan vs. Registrar Cooperative Societies, etc.), W.P. No.1345/2018 (Manzoor Ahmad Kiani v. Registrar Cooperative Societies, etc.), W.P. No.1420/2018 (Muhammad Shahid Mumtaz v. Registrar Cooperative Societies, etc.), and W.P. No.1984/2018 (Muhammad Shahid Mumtaz v. Registrar Cooperative Societies, etc.) stand *disposed of* in the above referred terms.

12. The last question raised in the C.R. No.92/2018, C.R. No.93/2018, C.R. No.94/2018, and C.R. No.95/2018 whereby the rival candidates have challenged the qualification and disqualification in different civil suits before the Civil Courts although all the Civil Revisions have become *infructuous* as the main prayer made in the suits is only to the extent of rejection or acceptance or disqualification of candidatures of different positions of the candidates under the By-laws of the Society, ICT Cooperative Societies (Managing Committee Election) Rules, 2014 and Cooperative Societies Act, 1925. However, in order to consider an opportunity for future reference, I have gone through the relevant provisions of the ICT Cooperative Societies (Managing Committee Election) Rules, 2014 whereby the rules are clear in its terms and any person who is

aggrieved with the scrutiny of nomination papers, candidatures of the candidates, or qualification and disqualification in the election process, is allowed to file an appeal in terms of Rule 16 which is as under:

**16. Appeal:**

- i) *An appeal by a candidate or a member, as the case may be, shall lie to the Authority within 5 days of the decision of the Election Commission in respect of:-*
  - a) *Qualification or disqualification of a candidate.*
  - b) *Notified voter list.*
  - c) *Election procedure.*
  - d) *Result of the Election.*
  - e) *Any other issue relating to the election under these Rules.*
- ii) *Upon appeal, decision of the Authority, shall be final.*
- iii) *The Decision of the Authority declaring the election of any candidate or candidates as invalid shall not affect the business conducted by the Committee with the participation of such candidate or candidates, during the pendency of the appeal, unless in the opinion of the Authority, the same prejudices the interest of the members of the Society or defeats any provision of the Act.*
- iv) *Re-election of any candidate or candidates of the society shall be made in accordance with the procedure laid down in Rule 6(iii) ante.*

The above referred appellate provision covers all kinds of situations including the qualification/disqualification, dispute of voters list, election process, results, or any other issue, and even otherwise, Rule 13 also gives an overriding effect to the Election Commissioner whose decision shall be final in all respects regarding any question relating to conduct of election, therefore, I am of the considered view that Election Commission is the sole authority to decide all these questions at the first instance and the only remedy provided against the said order of Election Commissioner is under Rule 16 of the Rules *ibid*, whereafter the parties are governed under the Cooperative Societies Act, 1925 as the election process directly relates to the business of society, whereby Section 4 deals with the concept of Registrar

who has been appointed by the Provincial Government and who has been empowered to decide any question arises as to whether for the purpose of this Act, therefore, the ultimate authority vested with Registrar, he can deal with all kinds of affairs of the Society under the Cooperative Societies Act, 1925, even he can give directions, opt for special measures, inquire into different matters, assess damages, enter into arbitration if dispute relates to business of Society, set-aside award, attach the properties, hear the appeals in terms of Section 56 against the award of the Arbitrator, recover the amounts, whereafter the law provides appeal in terms of Section 64(A) which is referred as under:

*64A. Power of Provincial Government and the Registrar to call for proceedings of Subordinate Officers and to pass orders thereon.— The Provincial Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any officer subordinate to them for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. If in any case, it shall appear to the Provincial Government or the Registrar that any decision or order or proceedings so-called for should be modified, annulled or reversed the Provincial Government or the Registrar, as the case may be, may pass such order thereon as to it or him may seem fit.*

The above referred provisions give vast powers whereas while dealing with the case in hand, the powers vest to Chief Commissioner, Islamabad, ICT, he can call for, examine the record of any inquiry or the proceedings of the officer subordinate for the purpose of satisfying as to the illegality or propriety of any decision or order passed and to regulate the proceedings of such officer. The Provincial Government is empowered to modify, annul or reverse any decision, order or proceedings and in my humble view, the Registrar while exercising the powers under the ICT Cooperative Societies (Managing Committee Election) Rules, 2014 has to be treated as subordinate officer to the Provincial Government in context of Section 64(A) of the Act, 1925.

13. This Court is also of the view that in terms of Rule 16 of the ICT Cooperative Societies (Managing Committee Election) Rules, 2014 which provides an appeal against the order of Election Commissioner which lies with Registrar and the said authority may also be looked into with reference to Section 64(A) of the Act, 1925 as the said ICT Cooperative Societies (Managing Committee Election) Rules, 2014 were notified in terms of powers conferred under Section 91 of the Cooperative Societies Act, 1925, the rules have been framed by the Provincial Government in Islamabad, i.e. the Chief Commissioner, who is performing the role of Provincial Government in this regard, therefore, his powers to overall view the every situation is equally enforced, hence, the adequate remedy under the law has been provided in two folds, *firstly*, under Rule 16 of the ICT Cooperative Societies (Managing Committee Election) Rules, 2014, and *secondly*, under the Cooperative Societies Act, 1925, whereby powers conferred in terms of Section 3(f) of the Cooperative Societies Act, 1925 which is the Registrar of the Cooperative Societies who is the subordinate officer of the Provincial Government i.e. Chief Commissioner, ICT, in terms of Section 64(A), therefore, adequate remedies have been provided under the law but it has been noticed with great concern that majority of the members, candidates, objectors, and individuals, filed different civil suits before the Civil Courts, Islamabad by invoking the jurisdiction in terms of Section 9 CPC. For ready reference, the said provision is reproduced as under:

***Section 9: Courts to trial all suits unless barred.***

*The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of civil nature excepting suits of which their cognizance either expressly or impliedly barred.*

The above referred section only grants a substantive right of action to the extent of right which exists and Civil Courts have jurisdiction to take cognizance whereas the term "*jurisdiction*" refers to the legal authority to



administer justice in accordance with the means provided by law and subject to limitation imposed by law. Reliance is placed upon 1999 SCMR 900 (Rehmat Ali vs. Additional District Judge, Multan) and PLD 1973 SC 49 (The State v. Zia-ur-Rehman).

14. In view of above authoritative judgments, this Court is of the view that the Civil Courts have power to hear, determine and adjudicate a cause by exercising its judicial power and authority which has been provided in the law, therefore, while dealing with such proposition, the power to try all kinds of suits of civil nature are available to the Civil Courts and as such the dispute concerning to any party relating to Society may also fall within the said concept but the jurisdiction of Section 9 CPC is only applicable unless a special law is not available in field relating to particular dispute or cause of action which has been raised before the Civil Court whereas in this case the Cooperative Societies Act, 1925 is in existence which governs the issues of members of the Society and the preamble of the said law provides the outline in a specific manner which is as under:

*“Preamble.— Whereas it is expedient to provide for the formation, registration and regulation of co-operative societies for the promotion of thrift, self-help and mutual assistance amongst agriculturist or other persons with common economic or social interests and for achieving better standards of living and for the matters incidental thereto.”*

15. The above referred outline of the law gives an overall impression that it deals with the issues of members of the Cooperative Societies, who have their common economic and social interests in order to achieve the better standard of living including the matters incidental thereto and the said law provides details of powers of Registrar, dispute resolution mechanism, appeals, and concept of revisions. Similarly, the law provides

an embargo in Section 70(a) which provides a bar of jurisdiction which starts with non-obstante clause in the following words:

*“No Court or other authority, whatsoever shall have jurisdiction to entertain, or to adjudicate upon, any matter which the Provincial Government, the registrar, or his nominee, any arbitrator or liquidator, Society, financing bank, cooperative bank, or any other person as empowered by, or under this Act, or the rules or the By-laws framed thereunder, to dispose of or to determine.”*

16. Similarly, the provision of 70(a)(c) further places an embargo in the following words:

*“No Court or other authority whatsoever shall be competent to grant any injunction or pass any other order in relation to any proceedings under this Act or any Rules or By-laws framed thereunder before the Provincial Government, a Society, a Financing Bank, a Cooperative Bank, the Registrar or any other person referred to in clause (a).”*

17. In view of above legal provisions, this Court is of the opinion that no matter what the case may be the jurisdiction of the Civil Courts to entertain the suits on the question relating to nomination, scrutiny, results, qualification/disqualification of candidates, or with reference to voters list or dealing with the electoral process is barred and jurisdiction under Section 9 CPC is not vested with the Civil Courts to entertain suits in such questions.

18. Similarly, the Cooperative Societies Act, 1925 also provides another non-obstante clause i.e. Section 70, where a suit shall not be instituted against the Society or any other officer in respect of any Act touching the business of Society until expiration of two months next after notice in writing which has been delivered to the Registrar by stating the details of cause of action and nature of the statement which clearly shows that when the authority vested to Registrar under the said Act, the complaint or grievance can only be addressed by Registrar only and unless the Registrar is notified to that extent and the matter has not been decided whereafter the

aggrieved person after issuance of notice in terms of Section 70 of the Cooperative Societies Act, 1925 can file a civil suit, although this does not automatically empowers the Civil Courts to exercise the jurisdiction in violation of Section 70(a) of the Cooperative Societies Act, 1925, therefore, all the Civil Courts shall have to apply the law in a manner provided and all other modes stand excluded.

19. In view of above background, the civil suits relating to electoral process of society, its appeal before the appellate District Courts in the district shall be considered barred by every stretch of imagination and the matter can only be agitated before the relevant forums defined in the ICT Cooperative Societies (Managing Committee Election) Rules, 2014 as well as under the Cooperative Societies Act, 1925 in letter and spirit.

20. In a nutshell, the fate of the captioned petitions is decided in the following manner:

- i) W.P. No.1486/2018 (Shahzad Ahmad Gondal v. Registrar Cooperative Societies, etc.) is ***dismissed***.
- ii) W.P. No.1423/2018 (Muhammad Ayyaz Khan v. Ehsan Elahi, etc.) is ***dismissed***.
- iii) W.P. No.1562/2018 (Nusrat Ullah vs. Election Commissioner/J&KCHS) is ***allowed*** and the orders dated 16.02.2018 and 16.04.2018 passed by Election Commission and the appellate authority, respectively, to the extent of Zia Ullah Shah, are hereby ***set-aside*** having no legal effect.
- iv) W.P. No.1085/2018 (Naseem Anjum vs. Registrar Cooperative Societies, etc.), W.P. No.1086/2018 (Muhammad Ayaz Khan vs. Registrar Cooperative Societies, etc.), W.P. No.1345/2018 (Manzoor Ahmad Kiani v. Registrar Cooperative Societies, etc.), W.P. No.1420/2018 (Muhammad Shahid Mumtaz v.

Registrar Cooperative Societies, etc.), and W.P. No.1984/2018 (Muhammad Shahid Mumtaz v. Registrar Cooperative Societies, etc.) stand *disposed of* with direction to the Election Commission to notify the new election date on the basis of previous nomination papers within 30 days and notify voters list within the period of 10 days with further direction to conduct the election on the said notified date by all means.

- v) C.R. No.92/2018 (Zia Ullah Shah v. Muhammad Khaqan, etc.), C.R. No.93/2018 (Abdul Majeed Chohan vs. Khalid Bashir), C.R. No.94/2018 (Naseem Anjum v. Muhammad Khaqan, etc.), and C.R. No.95/2018 (Jammu & Kashmir Cooperative Housing Society v. Muhammad Kaleem Ullah, etc.) have become *infructuous*.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: 31<sup>st</sup> May, 2018.

JUDGE

Approved for reporting.

Khalid Z.