

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

W.P. No.2490 of 2021  
Ayaz Ahmed Khan  
**Versus**  
Federation of Pakistan and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	<b>12.07.2021</b>	<b>Mr. Riaz Hanif Rahi, Advocate for the petitioner.</b>

Through the instant writ petition, the petitioner, Ayaz Ahmed Khan, who is presently serving as Director General (Design) in the Capital Development Authority (“C.D.A.”), seeks the issuance of a writ of *quo warranto* to remove respondent No.4 (Amer Ali Ahmed) from the statutory post of Chairman, C.D.A., to which he was appointed vide notification dated 05.07.2021 issued by the Establishment Division. As per the contents of the said notification, the Federal Government had approved the appointment of respondent No.4, who is a BPS-20 officer of the Pakistan Administrative Service and also serving as Chief Commissioner, Islamabad Capital Territory (“I.C.T.”), as Chairman, C.D.A. under Section 6(2) of the Capital Development Authority Ordinance, 1960 (“the C.D.A. Ordinance”).

2. Learned counsel for the petitioner submitted that respondent No.4 could not have been appointed as Chairman, C.D.A. since he was already serving as Chief Commissioner, I.C.T.; that he could not hold both the posts at the same time; that undue favour had been extended to respondent No.4 by giving him the additional charge of the post of Chairman, C.D.A. for a period of about two and a half years prior to the issuance of the notification dated 21.04.2021; that the impugned appointment had been made

in violation of Section 6(2) of the C.D.A. Ordinance which provides that the Chairman, C.D.A. is to be appointed from amongst the Members of the C.D.A. Board; that respondent No.4 had, at no material stage, been appointed as Member of the C.D.A. Board and therefore could not have been appointed as Chairman, C.D.A.; that only a person who emerges successful in a competitive process should be appointed as Chairman, C.D.A.; that the petitioner had, vide letter dated 26.05.2021 addressed to respondent No.4, voiced concerns about the appointment of a deputationist as Member (Estate) C.D.A.; that the petitioner had, on 02.07.2021, filed complaints against respondent No.4 to the Secretary, Interior Division and Secretary, Establishment Division, urging them to proceed against respondent No.4 for misconduct; that the petitioner had also filed an application on 08.07.2021 to the Chairman, National Accountability Bureau, for conducting an inquiry against respondent No.4; that the instant petition has been filed in the public interest; and that it is incumbent on the Federal Government to restructure the C.D.A. so as to appoint Members of the C.D.A. Board from amongst the regular employees of the C.D.A. through a process of selection. During his submissions, learned counsel for the petitioner made disparaging remarks against the Chairman, C.D.A. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

4. It is well settled that the High Court's power under Article 199 of the Constitution to grant relief to a petitioner by issuance of directions, orders or writs is purely discretionary. This power can be exercised to grant relief only to a person whose conduct does not disentitle him to obtain such relief. The exercise of writ jurisdiction has to be founded on sound discretion and on consideration of recognized judicial principles governing exercise of such discretion. The High Court cannot refuse to take into consideration a petitioner's conduct which disentitles him from such relief.

5. A writ of *quo warranto* is not to be issued as a matter of course. It is in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case. The foremost obligation of the Court while hearing a petition seeking the issuance of a writ of *quo warranto* is to enquire into the conduct and motive of the relator and may, in its discretion, decline to issue a writ where it would be vexatious to do so. Reference in this regard may be made to the judgments in the cases of Tariq Mehmood A. Khan Vs. Sindh Bar Council (2011 YLR 2899), Muhammad Shahid Akram Vs. Government of Punjab (2016 PLC (C.S.) 1335), and Mirza Luqman Masud Vs. Government of Pakistan (2015 PLC (C.S.) 526).

6. For instituting a writ of *quo warranto*, it is not necessary that any fundamental or other legal right of the petitioner is infringed. Any person is free to challenge the validity of an appointment to a public office. However, the Court must be satisfied that the petition is *bona fide* and not motivated by any malice against the person whose appointment is under challenge. A

writ of *quo warranto* should be refused where it is an outcome of malice or ill-will. The Court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other *mala fide* object. Reference in this regard may be made to the following case law:-

- (i) In the case of Muhammad Arif Vs. Uzma Afzal (2011 SCMR 374), it has been held as follows:-

*“5. There is no cavil to the proposition that the “conduct of petitioner can be taken into consideration in allowing or disallowing equitable relief in constitutional jurisdiction. The principle that the Court should lean in favour of adjudication of causes on merits, appears to be available for invocation only when the person relying on it himself comes to the Court with clean hands and equitable considerations also lie in his favour. High Court in exercise of writ jurisdiction is bound to proceed on maxim “he who seeks equity must do equity”. Constitutional jurisdiction is an equitable jurisdiction. Whoever comes to High Court to seek relief has to satisfy the conscience of the Court that he has clean hands.”*

- (ii) In the case of Dr. Azim-ur-Rehman Khan Meo Vs. Government of Sindh (2004 SCMR 1299), wherein it has been held as follows:-

*“It is well-settled by now that under Article 199 all the reliefs obtainable under it are purely discretionary and on the principles governing writs of quo warranto the relief under Art. 199 (2)(ii) is particularly so. Quo warranto is not issued as a matter of course. The Court can and will enquire into the conduct and motive of the relator. No precise rule can be laid down for the exercise of discretion by the Court in granting or refusing an information in the nature of quo warranto. All the circumstances of the case taken together must govern the discretion of the Court. The discretion has to be exercised in accordance with judicial principles. The writ is not to issue as a matter of course on sheer*

*technicalities on a doctrinaire approach.”*

- (iii) In the case of Ashok Kumar Pandey Vs. The State of West Bengal (AIR 2004 SC 280), it was held as follows:-

*“Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.”*

The law laid down in the said case was quoted with approval by the Hon'ble Supreme Court in the case of Dr. Muhammad Tahir-ul-Qadri Vs. Federation of Pakistan (PLD 2013 SC 413), wherein it was held as follows:-

*“16. It is abundantly clear that for a person to activate the jurisdiction of this Court as a public interest litigant, for the enforcement of the Fundamental Rights of a group or a class of persons, he must show on the given facts that he is acting bona fide. However, it would be for this Court to decide, on the given facts whether he is acting bona fide or not and*

*whether the petition is suffering from laches or not.”*

- (iv) In the case of Aziz-ur-Rehman Ch. Vs. M. Nasiruddin and others (PLD 1965 SC 236), it was held as follows:-

*“The Court from which the writ was sought was entitled to enquire into the conduct and motives of the appellant for such a writ and if the information was considered to be merely of a vexatious nature the Court was entitled to refuse to exercise its discretion in favour of the appellants.”*

7. Now, it needs to be determined whether the conduct of the relator in the present case has gone to such an extent that this Court should, in view of that conduct, consider him to be unworthy of being entrusted with a writ in the form of *quo warranto*.

8. The petitioner had filed writ petition No.915/2021 titled “Ayaz Ahmed Khan Vs. Pakistan through Federal Government’s Secretary Establishment Division, etc.” before this Court. Along with the said petition, the petitioner had filed letter dated 08.02.2021 from the C.D.A. to the Secretary, Ministry of Interior. In the said proceedings, the C.D.A. had alleged that the said letter was not genuine. On 10.03.2021, this Court passed the following order:-

*“During the course of arguments, the learned counsel who has appeared on behalf of the Capital Development Authority has pointed out that letter, dated 08.02.2021, copy whereof is attached with the petition at page-18, is not genuine. The letter is addressed to the Secretary, Ministry of Interior and not endorsed to any other officer. The petitioner, therefore, being senior officer of the Capital Development Authority has to justify as to how he had obtained a copy of letter, dated 08.02.2021. The petitioner is directed to submit an affidavit justifying how he had obtained copy of letter, dated 08.02.2021. In the same affidavit he will also explain the serious allegation made by the learned counsel for the*

*Capital Development Authority that the copy annexed with the petition is not that of the original letter.*

*2. The Chairman, Capital Development Authority is also directed to inquire into the matter as to how the petitioner had obtained copy of letter, dated 08.02.2021 and whether it is copy of the original letter.*

*3. Relist, on 22.03.2021.”*

9. In compliance with the said order dated 10.03.2021 passed by this Court, the Chairman, C.D.A./respondent No.4 submitted a report to this Court according to which a fact-finding inquiry had been initiated; in this regard the Director Security, C.D.A. had been directed to submit a report. As per the contents of the said report, the Director Security, C.D.A. had been nominated to conduct the fact-finding inquiry. The Director Security, C.D.A., vide letter dated 17.03.2021, called upon the petitioner to attend his office at 04:00 pm on the same day so that the inquiry proceedings could be finalized. It is an admitted position that the petitioner did not appear before the Director Security, C.D.A. The Director Security, C.D.A. proceeded further in the petitioner's absence and after examining the record, submitted his report dated 18.03.2021, with the following findings:

*“Keeping in view the above facts, after examining the record, it has been concluded that it is clear that a copy of tempered official letter has been submitted by the petitioner Mr. Ayaz Ahmed Khan, D.G Works, CDA in the honorable court along with his petition and the same has not been obtained from the CDA record.”*

10. Vide letter dated 17.03.2021 addressed to the Chairman, C.D.A., the petitioner had objected to the notice served on him with respect to the fact-finding inquiry on the ground that the notice had been issued by an officer junior to him. Vide letter dated 18.03.2021, the petitioner was informed that Member (Administration),

C.D.A., who is a BPS-20 officer, had been authorized by the competent authority to solicit the petitioner's views and comments on the matter as to how he had obtained a copy of letter dated 08.02.2021, and whether it was a copy of the original letter. The petitioner was called upon to attend the office of Member (Administration), C.D.A. on 19.03.2021 for the said purpose. The petitioner did not appear before the Member (Administration), C.D.A. on the said date. Apparently, vide letter dated 19.03.2021, the petitioner also objected to the nomination of the Member (Administration), C.D.A. to conduct the inquiry.

11. Vide order dated 04.05.2021, writ petition No.915/2021 was dismissed as withdrawn. The petitioner feels that the withdrawal of the said petition should have closed the chapter regarding the allegation of filing a copy of a tampered letter. Be that as it may, on 11.06.2021, the Secretary, Ministry of Interior approved the appointment of the Chairman, C.D.A./respondent No.4 as the authorized officer to initiate disciplinary and criminal proceedings against the petitioner in accordance with Chapter 8, Rule 8.01 of the C.D.A. Employees (Service) Regulations, 1992. Thereafter, vide notice dated 22.06.2021, the Chairman, C.D.A./respondent No.4 called upon the petitioner to show cause within seven days as to why major penalty of dismissal from service should not be imposed on him under clause 8.04(1)(b)(iv) of the C.D.A. Employees (Service) Regulations, 1992. In the said show cause notice, the petitioner was alleged to have committed the following acts of misconduct:



*“i. You have obtained a copy of official letter No. CDA-Admin(CHN)-01/2021/1057 dated 08-02-2021 without resource to any legal and justifiable source, which was a Confidential document and addressed directly to the Secretary, Ministry of Interior with no other copy marked to any other official / officer etc.*

*ii. You, thereafter, tempered / changed the copy of aforementioned confidential official letter by hiding/ omitting paragraph No. 5 of said letter for utilizing the same to gain your malafide interest.*

*iii. You, later on, utilized the copy of changed / tampered letter by submitting it as annexure “F” (Page-18) in Writ Petition No. 915 /2021 filed by you before the Honorable Islamabad High Court.*

*iv. During course of hearing in Islamabad High Court on 10-03-2021 in aforementioned Writ petition, this issue was pointed out by CDA Counsel, whereupon Honorable, Islamabad High Court, vide Order dated 10-03-2021 in said Writ Petition, directed the undersigned to inquire into the matter as to how the petitioner had obtained copy of letter dated 08-02-2021 and whether it is copy of original letter.” Accordingly, the inquiry proved that a copy of tempered official letter has been submitted by the petitioner Mr. Ayaz Ahmed Khan, DG (Works), CDA in the Honorable Court along with his petition and the same has not been obtained from CDA record. (Copy of Court Order and inquiry report enclosed)”*

12. On 28.06.2021, the petitioner submitted his reply to the said show cause notice and on 29.06.2021 the petitioner filed writ petition No.2318/2021 assailing the said show cause notice. On 30.06.2021, this Court passed an ad-interim order suspending further proceedings under the said show cause notice.

13. The C.D.A. had also filed a criminal complaint on 11.06.2021 against the petitioner before the Senior Superintendent of Police (Operations), Islamabad, seeking the registration of a criminal case against him on the basis of the fact-finding inquiry report. On the very same day, F.I.R. No.327/21 was registered against the petitioner under Sections 420, 468 and 471 of the

Pakistan Penal Code, 1860 ("P.P.C.") at Police Station Aabpara, Islamabad.

14. On 21.06.2021, the petitioner filed writ petition No.2196/2021 assailing (i) inquiry notice dated 17.03.2021 issued by the C.D.A. informing the petitioner that an inquiry was being conducted with respect to orders passed by this Court in writ petition No.915/2021, (ii) inquiry report dated 18.03.2021, whereby the Inquiry Officer affirmed that a tempered official letter had been submitted by the petitioner before this Court along with the said writ petition, and (iii) F.I.R. No.327/2021 registered against the petitioner under Sections 420, 468 and 471, P.P.C. at Police Station Aabpara, Islamabad on the complaint of Naeem Akbar, Director Law, C.D.A. Vide ad-interim order dated 23.06.2021, this Court suspended the operation of the said F.I.R.

15. The impugned notification dated 05.07.2021, whereby respondent No.4 was appointed as Chairman, C.D.A., was issued during the pendency of writ petition No.2004/2021 through which none other than the petitioner had assailed notification dated 21.04.2021 issued by the Establishment Division, whereby respondent No.4 had been given the additional charge of the post of Chairman, C.D.A. for a period of three months with effect from 15.04.2021 or till the selection of a new Chairman, C.D.A., whichever was earlier. Along with the said writ petition, the petitioner also filed an application for interim injunction praying for the suspension of the said notification dated 21.04.2021. Vide order dated 09.06.2021, this Court issued notice to the respondents in the said writ petition.

16. On 16.06.2021, the petitioner filed criminal original petition No.156/2021 praying for *inter alia* the Chairman, C.D.A. to be proceeded against for contempt of Court. Since no injunctive order had been issued by this Court in writ petition No.2004/2021, the petitioner withdrew the said criminal original petition.

17. Chairman, C.D.A. had issued a show cause notice to the petitioner; Chairman, C.D.A. is the administrative head of the organization which had conducted a fact-finding inquiry against the petitioner and given findings adverse to his interests; and a criminal complaint had also been filed by the C.D.A. against the petitioner. These facts and the facts referred to in paragraphs 8 to 16 above, cause me to hold that the instant writ petition is vexatious and spirited by personal vendetta, and that the petitioner approached this Court only to settle the personal scores with respondent No.4. The pleadings in this petition that the Chairman, C.D.A. *“played active role in regularizing the important constructions of Bani Gala, strong roots in bureaucracy and accommodated the beloved of political stalwarts on deputation...”* are indicative of the venom that the petitioner has for respondent No.4. The case at hand is not one where the petitioner has no personal interest in the matter. He, indeed, has a personal interest and that interest is to see that respondent No.4 is harmed for having issued him a show cause notice and being the head of an organization that had lodged an F.I.R. against him. The High Court must not allow its process to be abused by self-seeking and self-serving persons under the garb of public interest litigants. The High Court must be prudent and careful to see that the person who approaches

the Court is acting *bona fide* and not for personal gain or oblique consideration. Since it is apparent that the filing of this writ petition is motivated by malice, it is liable to be dismissed on that ground alone.

18. In view of the above, the instant petition is dismissed in *limine*. I am mindful of the fact that this Court has not issued notice to the respondents arrayed in the petition but given the petitioner's conduct, costs of Rs.50,000/- are being imposed on him under Section 35(1)(iii) of the Code of Civil Procedure, 1908, as amended by the Costs of Litigation Act, 2017. The C.D.A. shall deduct these costs from the petitioner's salary and deposit the same in the Government treasury. The deposit challan shall be submitted before the Deputy Registrar (Judicial) of this Court within a period of two weeks.

19. This judgment shall not be treated as a verdict on the legality of the impugned notification dated 05.07.2021 which could be subjected to a challenge in competently instituted proceedings by a *bona fide* litigant.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

Ahtesham\*

**APPROVED FOR REPORTING**