

Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

WP No.156887 of 2018

Syed Kaleem ur Rehman etc
Vs

Secretary Cooperatives, Government of Punjab, etc

J U D G M E N T

Date of Hearing	15.02.2018.
Petitioners By:	Mr. Muhammad Javaid Iqbal Qureshi, Advocate in WP No.156887/2017. Mr. Saad Rasool, Advocate in WP No.154849/2018. Mr. Khalid Ishaq, Advocate in WP No.160181/2018.
Respondents By:	Mr. Iftikhar Ahmad Mian and Ch. M. Ejaz Jamal, Advocates for Respondent Society. Kh. Salman Mahmood, AAG with Muazzam Ali Butt, Assistant Registrar (Housing-III), Lahore and Farrukh Hayat Pannu, Convener Election Sub-Committee in person.

Ayesha A. Malik J: This single judgment decides upon the issues raised in the instant petition as well as connected WP Nos.154849 and 160181 of 2018 as common question of law and facts are involved in these petitions.

2. The Petitioners in all the petitions are members of the Cooperative Model Town Society (“**Society**”) and some have served on the Managing Committee (“**M.C**”) of the Society. A dispute has arisen between the Petitioners and the Society with reference to the upcoming 2018 elections for the MC of the Society. In the instant case, objection was raised by Respondent No.6 before the Election Sub-Committee (“**ESC**”) with respect to the membership of the Petitioners. The ESC heard the objection and passed order dated 24.01.2018 whereby the names of the Petitioners were directed to be deleted from the voter list. The reason given in the order was that the Petitioners were not the original allottees of the settlement

department and are subsequent purchasers, hence, their membership is hit by clause 13 (i) and (ii) of the Bye Laws of the Cooperative Model Town Society (1962) Limited, Lahore (“**the Byelaws**”), meaning thereby that they cannot be members of the Society and their names were directed to be deleted from the voters list of the Society. The Petitioners filed a revision petition before the Secretary Cooperative, who passed order dated 25.01.2018 suspending the order of ESC dated 24.01.2018. Against the order of 25.01.2018 Respondent No.6, Arif Majeed filed WP No.154849/2018 on the ground that the Secretary Cooperative did not have jurisdiction as an appeal against the order of ESC lies before the Registrar Cooperative and not before the Secretary Cooperative. The order of 25.01.2018 was suspended by this Court vide order dated 29.01.2018 passed in WP No.154849/2018. The Petitioners in the instant petition withdrew the revision petition filed before the Secretary Cooperative and filed a petition under Section 64-A of the Cooperative Societies Act, 1925 (“**Act**”) before the Registrar Cooperative, who vide order dated 30.01.2108 declined to interfere in the matter on account of the pendency of the present petitions before this Court. The said order was impugned before the Secretary Cooperative on the same day who also declined to interfere on the same ground vide order dated 30.01.2018. Both these orders of 24.01.2018 and 30.01.2018 have been impugned in the instant petition along with the order dated 24.01.2018 of ESC.

3. The Petitioner in WP No.154849/2018 is a member of the society, who is aggrieved by the participation of the Petitioners of WP No.156887/2018 in the upcoming election on the ground that they do not qualify as members of the Society and therefore, cannot contest the election. The Petitioner, Arif Majeed filed WP No.154849/2018 challenging the order of 25.01.2018 passed by the Secretary Cooperative, however, subsequently since the revision petition pending before the Secretary Cooperative was withdrawn as such the prayer to the extent of the impugned order has become infructuous. The Petitioner also questions the participation of

Respondents No.6 and 7 (Petitioners in WP No.156887/2018) in the election.

4. The Petitioners of WP No.160181/2018 are members of the Society, who have actively taken part in the affairs of the Society. They are desirous to contest the upcoming election of the Society. However, their names have also been deleted from the voters list by ESC on the basis of some objections. They are aggrieved by orders dated 24.01.2018 and 30.01.2018 passed by Respondents No.1 to 3 whereby the names of the Petitioners were directed to be deleted from the voters list.

5. Counsel for the Petitioners argued that the order of ESC failed to take into consideration the fact that both the Petitioners are members of the Society since long and that they have contested and participated in the previous elections for the Managing Committee. That the ESC does not have jurisdiction to terminate or expel any member of the Society as a member of the Society enjoys substantive rights which cannot be adjudicated upon by the ESC. Further that the election schedule gives no time to a member whose name has been deleted to file an appeal before the Registrar and have decided the matter before the nomination process commences.

6. Counsel for Respondent No.6 argued that ESC has jurisdiction in the matter and in terms of the election rules the ESC hears all objections against the voters list and passes a final order making all additions and corrections to the electoral rolls. Learned counsel has placed on record the election schedule and the notifications appointing the ESC. Against the order of the ESC the right of appeal lies before the Registrar Cooperative which is the proper forum to hear the matter. Both counsel in WP No.160181/2018 and WP No.154849/2018 prayed that the matter be referred to the Registrar Cooperative for a decision on merits.

7. Convener ESC present in Court stated that as per his understanding the ESC passed the orders of deletion as per its jurisdiction and that it was competent to delete the names of members who do not quality to be members.

8. Heard and record perused. The basic issue in these petitions is the role of the ESC when considering objections against the voters list. The relevant rules are the Election Rules of the Cooperative Model Town Society. In terms of the Election Rules preliminary list of members is prepared blockwise, sixty days before the date on which the election is scheduled to be held. A Sub-Committee consisting of the President and two members is appointed by the Managing Committee who will hear and pass orders on the objections raised on the voting list *within ten days of the last date fixed for filing objections*. After the objections are filed and finally disposed of by the ESC, the list of additions and corrections of the electoral rolls is published and a final voter list is made available. In terms of the election schedule issued by the ESC, the last date for filing objections against the voter list was 23.01.2018, which were to be decided within two days and the final voters list was displayed on 27.01.2018. In terms of the Election Rules the ESC hears objections on the voters list for the purposes of addition and correction in the voters list. Basically this entails a verification process wherein the ESC has to finalize the voters list on the basis of which the election can take place. The voters list provides for the names of the members and the relevant block number, the membership number, the CNIC number and a comment as to whether the member is a defaulter. This information on the list has to be verified and confirmed by the ESC and additions and corrections are made to the information provided. Therefore, the scope of work of the ESC so far as hearing objections on the voters list is limited to verification of the contents of the list to ensure that every name on the list is that of a member from the given blocks. The ESC can pass orders to the extent that it can make corrections and additions to the list to remove duplications, correct mistakes in the details given and delete the name of persons who have died. The ESC however cannot pass orders with respect to the qualification and eligibility of a member and cannot pass orders on whether a person is entitled to be a member. Membership and the rights attached thereto are controlled by the Byelaws of the Society as well as by the Act. In terms of the Byelaws of the Society the process to make members

is provided under Byelaws No.1 to 18. Byelaw No.19 provides for the termination of membership and Byelaw No.20 provides for the expulsion of a member. So far as expulsion of a member is concerned, in terms of Byelaw No.20 (1) a member may be expelled from membership by a vote of not less than two-third of the members present which took place in general meeting of the Society. Therefore, the power of expulsion of any member as per Byelaw No.20 lies with the General Body of the Society. In terms of Section 17 (b) of the Act, the Registrar can expel a member, who is a defaulter of the dues of the Society. Hence to the extent of expulsion of members, all parties before the Court agree that it can only be done through a meeting of the General Body or in terms of Section 17 (b) of the Act.

9. Respondent No.6 and the Chairman of the ESC relied upon Byelaw No.19 (c) to urge the point that ESC can terminate membership in terms of Byelaw No.19. However this argument is misconceived and against the spirit of the Act and Election Rules. A bare reading of Rules (iv), (v) and (vi) of the Election Rules makes it clear that ESC can only make additions and corrections in the voters list. The ESC cannot adjudicate upon the qualifications of a member and order to terminate the membership. In the cases before the Court the ESC passed orders on objections filed against the voters list (WP Nos.156887 and 160181 of 2018) wherein it was stated that the Petitioners are not qualified to be members of the Society in terms of Byelaw No.13 (2) of the Society. In order to determine whether the Petitioners stand terminated from their membership consequent to the qualification provided in Byelaw No.13 (2) of the Society, the matter has to be placed before the General Body/Managing Committee which has to hear the matter and pass an order whereafter right of appeal will be available to such a person before the Registrar Cooperative.

10. It is noted that in terms of the election schedule the last date for filing objections was 23.01.2018 and the objections had to be decided within two days. During this time in a situation such as in the instant petition where an order has been passed deleting the name of the Petitioners from the voter list because they are not qualified to be the members, leaves the Petitioners

remediless as they are unable to appeal the order of the ESC within the required time as per the election schedule. Hence the Petitioner came to this Court seeking interference in the matter.

11. In view of what has been stated above, WP Nos.156877 and 160181 of 2018 are **accepted** and the order dated 24.01.2018 and 30.01.2018 passed by ESC are set aside. The Petitioners may proceed with the nomination process and participate in the election for the Managing Committee of the Society. So far as WP No.154849/2018 is concerned, the same is **dismissed**.

(AYESHA A.MALIK)
JUDGE

Approved for reporting.

JUDGE

Anwaar*