

# IN THE HIGH COURT OF SINDH AT KARACHI

C P D – 3343 of 2017

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Sumaira Izhar  
vs.  
Province of Sindh and Others

For the Petitioner:	Mr. Zahid F. Ibrahim, Advocate
For the Respondent Nos. 1 till 3:	Mr. Meeran Mohammad Shah Assistant Advocate General Sindh
For the Respondent No. 5:	Mr. Haseeb Jamali, Advocate Mr. Saad Siddiqui, Advocate
Dates of Hearing:	29.11.2018 & 11.12.2018
Date of Announcement:	24.12.2018

## JUDGMENT

**Agha Faisal, J:** The present petition was filed, *inter alia*, seeking to restrain the Provincial Registrar Joint Stock Companies Sindh (“**Registrar**”) from interfering in the conduct of the 2017 elections for the Management Committee (“**Committee**”) of the Pakistan Educational Foundation (“**Foundation**”), being a society registered under the Societies Registration Act 1860.

2. Mr. Zahid F. Ibrahim set-forth case of the petitioner and while concluding his arguments submitted, upon instructions, that the petitioner and the remaining members of the Committee are willing to relinquish their remaining six month term to facilitate the holding of fresh elections of the Committee in January, 2019. The arguments advanced by the learned counsel are encapsulated and presented herein below:

i) Learned counsel drew attention to Article 17 of the Articles of Societies of the Foundation ("**Articles**") wherein it is stated that elections for the membership of the Committee shall be held after every two years. The learned counsel also drew attention to the relevant constituents of the constitution/byelaws of the Foundation ("**Byelaws**") wherein it was stipulated that the elections of the society shall be held after every two years, in the month of January. It was thus sought to be demonstrated that the elections to the Committee was required to be held in January, after each successive term of two years.

ii) It was further submitted that in the year 2013 there was a vacancy in the office of chairman and the term of the elected body had also expired and as a consequence thereof elections were held in May, instead of January of that year. In the year 2015 elections were once again held in May. Lastly, in the year 2017 elections were also scheduled to be held in the Month of May, upon the expiration of the two year term of the elected body.

iii) Learned counsel pointed out the letter dated 11.05.2017 issued by the Registrar ("**Impugned Letter**"), whereby it was highlighted that the holding of elections in May is improper as the same was contrary to the Byelaws of the Foundation. The present petition was filed as a consequence of the Impugned Letter and the setting aside of the same was also sought by virtue of the present petition. It was demonstrated from the record that elections of the Committee were held in May, 2017 during the pendency of this petition and with the permission of this Court. It

may be appropriate to reproduce the relevant order, dated 24.05.2017, herein below:

“Bailiff’s report reflects that notice stands served to the Respondents, however, none is in attendance on behalf of respondents. Whereas, State counsel pleads no instructions. Adjourned. Till the next date of hearing impugned letter issued by the Provincial Assistant Registrar, Joint Stock Companies, government of Sindh, Karachi dated 11.05.2017 (at page 105) shall remain suspended and Elections of the Society be conducted on 25.05.2017 accordingly.”

iv) It was submitted by the learned counsel that the 2017 elections have already been held in May, 2017 and even though the term of the Committee is said to expire in May, 2019, the petitioner and other members of the Committee are agreeable to forgo their remaining period in office so that fresh elections can be held in January, 2019 and thus the entire controversy may be amicably put at rest.

3. Mr. Meeran Mohammad Shah, learned Assistant Advocate General, did not controvert the proposal advanced by Mr. Zahid F. Ebrahim and adverted to the comments filed on behalf of respondents No.1 till 3, wherein the legality of the Impugned Letter was supported. It was thus contended that elections to the Committee were required to be held in the manner prescribed in the Foundation’s constitutive documents, hence in January. The comments of the Foundation itself, being the respondent No.4 herein, are also available on record and the Foundation has duly supported the stance of the petitioner and prayed that the present petition may be granted in the manner sought by the petitioner.

4. Learned counsel for respondent No.5, who had been impleaded in the present petition as a result of an intervener application, controverted the arguments advanced on behalf of the petitioner. Mr. Haseeb Jamali, Advocate, submitted that the petitioner had no authority to file the petition on behalf of the Foundation; that the petitioner was not an aggrieved person and could not assail the Impugned Letter; that the election process conducted in 2017 was in violation of the law; and that the conduct of the present Committee has been otherwise than in accordance with law. The learned counsel refused to accept the proposition whereby the present Committee was agreeable to the disposal of the present petition with the directions for fresh elections to be held in January, 2019, as required under the Byelaws and also identified vide the Impugned Letter.

5. We have considered the arguments of the respective learned counsel and in view of the offer / proposal advanced by the learned counsel for the petitioner, which appears to be reasonable under the circumstances, it is our primary duty to determine whether any justifiable cause has been placed before us to reject the aforesaid proposition.

6. The record reflects that notice of the 2017 election was issued on 1<sup>st</sup> May, 2017 and the elections were scheduled to be held on 17<sup>th</sup> May, 2017, after expiration of the prescribed notice period. The Impugned Letter is within our notice, however, it is also a matter of record that elections of the Foundation were ultimately held on 25.05.2017, after express sanction in respect thereof was received by virtue of an order of this Court. It is a matter of record that the said order of this Court dated 24.05.2017, sanctioning the holding of the elections, has not been assailed before any forum by the respondent No. 5 or any other person.

7. The manner in which the elections were held, inclusive of without limitation, the procedure adopted in respect thereof has not been challenged by the respondent No.5 before any forum and the same was admitted before us by the learned counsel for the said respondent. The learned counsel for the respondent No.5 raised some generic allegations with regard to the conduct of the present Committee. A specific question was put to the learned counsel to cite any illegal action that the incumbent Committee may have taken, however, the respective learned counsel failed to address the query. Notwithstanding the foregoing it is also an admitted fact that no action of the present Committee has been subjected to challenge by the relevant respondent, or any other person, before any forum in the preceding one and half years that they remain in office. The grievance of the respondent No. 5 is beyond the pale of this petition and in any event percolates into disputed questions of fact, the resolution whereof is discouraged in the exercise of writ jurisdiction. While the respondent No.5 was and remains at liberty to seek any remedy before the law it is evident that the same has not been done till date. On the other hand the proposition advanced by the learned counsel for the petitioner appears to be reasonable and we find no reason to disagree with the same.

8. In view hereof the present petition is disposed of in terms of the statement made by the learned counsel for the petitioner and elections to the next Committee of the Foundation are directed to be held in January, 2019 in accordance with the Byelaws.

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