

## IN THE HIGH COURT OF SINDH, KARACHI

SUIT NO.1042 / 2018

BEFORE

MR. JUSTICE ARSHAD HUSSAIN KHAN

FOR HEARING OF CMA 7823/2018

[u/o 39 rules 1 &amp; 2]

Mr. Abdul Sattar Pirzada and Mamoon Choudhry, Advocates for the Plaintiffs.

Mr. M. Tariq Memon, Advocate for the Defendants.

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**ARSHAD HUSSAIN KHAN, J.-** This is an application [C.M.A. 7823/2018] Under Order XXXIX Rules 1 and 2, C.P.C. r/w Section 151, C.P.C., whereby the plaintiffs have prayed to suspend the results of the purported elections of the Managing Committee of defendant No.1 for the tenure 2018-2020 held on 13.05.2018 and restrain defendants 6 to 20 from exercising any of the functions and powers conferred upon the Managing Committee and also restrain them from interfering with running and administration of defendant No.1 and/or restrain the defendants and their representatives from acting in furtherance of the impugned letter, the impugned list and the impugned notification. The brief facts giving rise to this application are as follows:

2. The plaintiffs being the members of Pakistan Hindu Council (defendant No.1) filed the present suit for declaration that the electoral process for the election of the office bearers and the Managing Committee of defendant No.1 for the tenure 2018-2020 is illegal and unlawful. The plaintiffs have also sought a declaration that the letter dated 09.05.2018 [impugned letter] and the final list of candidates dated 10.05.2018 [impugned list] purportedly issued by defendants 3,4 and 5 are illegal, unlawful, arbitrary and capricious. Plaintiffs have further sought a mandatory injunction in the form of directions that defendant No.1 shall hold fresh, fair and transparent elections in accordance with law.

3. It is alleged that defendant No.2, the patron of Pakistan Hindu Council [PHC], from the very inception of defendant No.1 [PHC]

continuously interfered with the functions and power of the Managing Committee in a bid to usurp the control of Managing Committee of defendant No.1. It is also alleged that defendant No.2 remained associated with the mainstream political parties and used the platform of defendant No.1 for his benefit and interest as he remained a member of both Federal Legislature and the Provincial Assembly.

4. It is averred in the plaint that suit No.19 of 2017 [said suit] was instituted before this Court challenging the issuance of the letter dated 17.12.2016 purportedly by the Vice President of defendant No.1, whereby the plaintiffs, in the said suit, were suspended from acting as General Secretary and Member Managing Committee of defendant No.1. It is also stated that the said suit had no nexus or connection whatsoever with the elections of defendant No.1, however, surprisingly an application under Order XXIII Rule 3 of CPC [compromise application], was jointly filed by Plaintiff No.1 and defendant No.2 in the said suit and as a result thereof the said suit [19 of 2017] was disposed of, vide order dated 03.04.2018 [compromise decree] whereby the parties agreed to hold election of defendant No.1 under the supervision of Nazir on the schedule mentioned in the compromise application. Subsequently, upon an application, order dated 03.04.2018 was modified on 10.04.2018 whereby the earlier election schedule, mentioned in the order, was amended. It is further averred that the signatory of the said application had no authority whatsoever to file such application on behalf of defendant No.1. Moreover, any resolution by the General Body of defendant No.1 to hold Election of the Managing Committee was not annexed along with the said compromise application. It is also averred that said compromise decree was a brazen agenda of holding illegal elections of the Managing Committee of defendant No.1 in an attempt to seize the control of defendant No.1. It is further stated that in pursuance of the compromise decree a sham and farcical electoral exercise was initiated. Dr. Pehlaj Mal, one of the present plaintiffs, filed an application under Section 12(2) of the Civil Procedure Code, 1908, bearing Judicial Miscellaneous [JM] No.33 of 2018 for setting aside the orders dated 03.04.2018 and 10.04.2018 which were allegedly procured through misrepresentation and fraud in Suit No.19 of 2017. The said JM was allowed on 08.05.2018 and the

aforesaid orders were set aside. It is also stated that defendants No.1 and 8, though preferred High Court Appeal No.126/2018 before a Division Bench of this Court, however the same was withdrawn and as a consequence withdrawal of aforementioned High Court Appeal, the order dated 08.05.2018 passed in the JM attained finality and resultantly the purported electoral process being conducted under the supervision of the Nazir of this Court was aborted.

5. It is also stated that soon after withdrawal of the above appeal the defendants No. 3, 4 and 5 in a surreptitious and clandestine manner issued letter dated 09.05.2018 [impugned letter] wherein it was notified that the final date for withdrawal of nomination forms for Pakistan Hindu Council Election 2018-2020 is 10<sup>th</sup> May, 2018, from 10:00 AM to 5:00 PM and final list of the candidate who will contest the election will be displayed on the office notice board of Pakistan Hindu Council at 6:00 PM on the same day i.e. 10<sup>th</sup> May, 2018. The plaintiffs immediately served legal notice dated 09.05.2018 upon defendant No.1 wherein it was categorically contended that with the setting aside of the two consent orders dated 03.04.2018 and 10.04.2018, the so-called election schedule and all steps and actions taken pursuant to the consent orders including any proceedings before the Nazir of the Court, became null and void.

6. It is stated that despite repeated cautions by the plaintiffs and other members of defendant No.1, the defendants in an attempt to usurp the affairs of Defendant No.1 carried out the illegal and farcical elections on 13.05.2018 at YMCA ground as a result of which Defendants 6 to 20 have been purportedly elected as the Managing Committee of defendant No.1. It is further stated that the conduct of the defendants as evident from aforementioned illegalities is tantamount to usurping the control of defendant No.1, and it is apprehended by the plaintiffs that defendants 6 to 20 will perpetuate their deceitful ploy by acting in a manner which is highly and severally prejudicial to defendant No.1 and to the Plaintiffs. It is also stated that as a consequence of the aforementioned irregularities, the genuine voters have been deprived from participating in the Elections and the affairs of

defendant No.1, which will be run in clear contravention of the terms and conditions provided in the Memorandum of PHC.

7. Upon notice of the application [CMA 7823 of 2018], a counter affidavit on behalf of defendants No.1 and 8 was filed denying the allegations levelled in the plaint as well in the application. It has been stated that the elections were held by the Election Committee in accordance with constitution of PHC in a fair and transparent manner and after obtaining all relevant approvals and as such no illegality, irregularity and/or violation of constitution of defendant No.1 could be attributed towards the defendants. It has been further stated that certain office-bearers /members of the PHC, whose right to hold office was suspended, challenged the said suspension in Suit No.19 of 2017. It has been further stated that in the said suit when it was pointed out to the court that the biennial elections of the Council had been announced and the electoral process had already been started and as such the suit would shortly become infructuous, the plaintiffs [in the said suit] raised certain apprehension regarding conduct of the election and to allay such apprehension, a consent order dated 03.04.2018 was passed directing that the election be held under the supervision of the Nazir. It has been further stated that the compromise was entered into on behalf of all the parties in the said suit through their duly appointed legal counsel who were authorized to do so and was additionally signed by Parshotam Lal Ramani (defendant No.8 in the present case) for himself and on behalf of Pakistan Hindu Council and by Jethamal Khelani on behalf of the plaintiffs in the said suit. It has also been stated that the Election Committee comprising present defendants No.3 to 5 were lawfully appointed by the Managing Committee as per the Council's constitution on 04.02.2017. It has been further stated that the election date was decided by the Managing Committee and approved by the General Body and election schedule thereafter was announced by the Election Committee. It has been also stated that Election for the period of 2018-2020 had to be conducted as per the council's constitution as the term of 2016-2018 was expiring on 04.04.2018. As such, the Managing Committee decided to hold elections on 29.04.2018 which was presented in 21<sup>st</sup> General Body Meeting held on 11.03.2018 wherein the election dated unanimously approved. Thereafter the

Election Committee issued the Election Schedule and the date of election was published for general information in the 'Daily Ibrat and 'Daily Awami Awaz' dated 14.02.2018 and 17.03.2018. It has also been stated that Pakistan Hindu Council does not bar member of political parties becoming part of its Managing Committee. Further stated that the Voters List was published by the Election Committee itself as per the Council's verified record. It has been further stated the plaintiffs in the present case, in order to achieve ulterior motives and frustrate the result held on 13.05.2018 have filed tempered documents to mislead this Court as such the suit is liable to be dismissed with cost.

8. The plaintiffs in reply to the above counter affidavit also filed affidavit-in-rejoinder reiterating the case set up in the plaint and rebutting the defence set up in the counter-affidavits

9. Learned counsel for the plaintiffs during the course of arguments while reiterating the facts mentioned the plaint has contended that defendants in an attempt to illegally usurp control of defendant No.1 carried out the farcical and sham electoral exercise in glaring violation of the categorical conditions incorporated in the Memorandum of Association [the Memorandum] of defendant No.1- PHC. Learned counsel while referring various provisions of the Memorandum has contended that it is expressly provided in the Memorandum that the Council shall hold its election every two years. Furthermore, it is also provided that the Elections will be held through votes by majority of the members and every member shall have the right to one vote, provided his membership stands valid at the time of election provided 180 days of membership from the date of entry is enjoyed by the member on the date of election. Moreover, it is also provided therein that a general invitation for elections will be circulated to all the members of the Society at least one month before the date fixed for elections by the General Secretary or the Election Committee along with (i) Nomination Form, (ii) Complete list of eligible voters and (iii) Schedule of Election containing clear instructions, which cannot be altered / amended, at any stage, before Election. Furthermore, it is also categorically stated therein that it is the function of the General Body to hold election of the Managing Committee as per schedule. It is also

argued that at the behest of Defendant No.2, Election Committee comprising of defendants No.3, 4 and 5 was illegally appointed without any approval by the General Body of defendant No.1 for holding Election of the Managing Committee for the tenure 2018-2020. Moreover, no general invitation for elections as amended under the Memorandum was circulated to all the members of the Society one month before the date fixed for elections. Learned counsel further argued that the said exercise has been carried out in complete disregard to the orders passed by this Court in JM No.33 of 2018 and that the sole purpose of the defendants to continue with the illegalities in respect of the electoral process is to intimidate and unlawfully compel the majority members of defendant No.1 into surrendering to the unlawful and ludicrous demands of defendants. It is also argued that at the whims of defendant No.2, the nomination form for election of the Managing Committee for the tenure 2018-2020 has been changed ostensibly in order to accommodate the candidates associated with mainstream political parties. In this regard, learned counsel referred to previous nomination forms containing a declaration that the candidate is not attached with/members of any political party and have thoroughly read out the memorandum and articles of the association of Pakistan Hindu Council and shall abide by its rules regulation. Per learned counsel said condition was incorporated in consonance with the object of PHC that Council shall be run on non-political, non-religious and non-commercial bases. Per learned counsel said condition was deleted from the nomination form for the elections 2018-2020 that too without any prior approval of the Managing Committee or the General Body. It is also argued that the purported election committee published a list of voters whose application for membership has not even been accepted by the Managing Committee, which is a condition precedent set out in the Memorandum. Besides this, the said membership form, which were over 500 in number improperly filled and had not even been signed by the concerned applicant and/or officer bearer. Further argued that initially the plaintiffs sent legal notice to defendant No.1, however, subsequently, around 100 other members were also sent legal notice to defendant No.1 wherein it was cautioned and advised to refrain from attempting to hold any sham election on 13.05.2018. It is also argued that as consequence of the illegalities and irregularities of

the defendants the genuine voters have been deprived from participating in the election and the affairs of defendant No., which is in clear contravention of the terms and condition of the Memorandum. Learned counsel lastly argued that the Plaintiffs have a good prima facie case and the balance of convenience is also in favour of the Plaintiffs and unless the application is allowed, the Plaintiffs along with other members of the PHC will suffer irreparable loss.

10. In response to the arguments of the learned counsel for the Plaintiffs, learned counsel for defendants while reiterating the contents of the counter affidavit argued that the Suit No.19 of 2017 was lawfully compromised whereby the elections was to be held under the supervision of the Nazir and due to delay in handing over the requisite election materials to the Nazir, a short extension to the election schedule was agreed by consent and this Court was pleased to pass consent order dated 10.04.2018 accordingly and as such date of elections was extended to 13.05.2018. Learned counsel further argued that the compromise was entered into on behalf of all the parties in the suit through their duly appointed legal counsel who were authorized to do so and was additionally signed by defendant No.8 on behalf of himself and the Pakistan Hindu Council and by Jethamal Khelani on behalf of the Plaintiffs in Suit No.19 of 2017, therefore, there was no illegality in either consent orders. Learned Counsel while referring documents annexed with the written statement has further argued that after the order passed in the JM, the election committee of defendant No.1 called and emergent meeting on 08.05.2018 wherein two options were placed: (i) To call off the election or (ii) to continue with the election on schedule dated 13.05.2018. In the said meeting it was decided that the Committee should continue with its responsibility under PHC Memorandum and complete the election process and hold election on 13.05.2018. Subsequently, the Election Committee proceeded to issue notification dated 09.05.2018 wherein the members of the PHC were informed that the final date of withdrawal of the nomination form was 10.05.2018. In addition, the venue of election was also announced. In order to frustrate the election process, certain government officials at the behest of the Plaintiffs, cancelled the venue of the election. The Committee left with no other option, made

alternate arrangements on an emergency basis and duly informed the members about the new venue. Subsequently, on 12.05.2018, a final list of candidates was announced and finally on 13.05.2018, the elections of the office bearers of the Managing Committee were held under strict security. After the election process was completed, the election committee announced the names of the successful candidates and thereafter handing over process was successfully completed and the new members took oath and commenced work in their respectively posts. It is also argued that the elections were held by the Election Committee in accordance with the constitution of PHC in a fair and transparent manner after obtaining all relevant and requisite approvals and as such no illegality, irregularity and/or violation of constitution of defendant No.1 in holding the election could be attributed towards the defendants. Learned counsel further argued that the Election Committee comprising the Defendants 3 to 5 were lawfully appointed by the Managing Committee as per the Council's Constitution and the Election date was decided by the Managing Committee and approved by the General Body and the election schedule was thereafter announced by the Election Committee. Learned counsel argued that the Election Committee issued the Election Schedule and the date of election was published for the general information in the Daily Ibrat and Daily Awami dated 14.02.2018 and 17.03.2018 and the Election Committee had already been appointed by the Managing Committee way back on 04.02.2017, therefore, no fresh approval of the General Body was required for the same. It is further argued that the Council is, no doubt, to be run on a non-political basis but the constitution of PHC does not bar a member of political parties from becoming part of its Managing Committee and that the right to belong to a political party is a basic fundamental right guaranteed by Article 17 of the Constitution of the Islamic Republic of Pakistan. In the last, learned counsel argued that the plaintiffs belong to electoral group which was badly lost the elections hence they have adopted every tactic possible to subvert the election and its result, and as such the listed application as well as the present suit is liable to be dismissed with costs.

11. I have heard the learned counsel for the Plaintiffs and the Defendants and have gone through the material placed on the record.



12. From the perusal of the record of the case, it emerges that the whole controversy is revolving around the election of the Managing Committee of defendant No.1, i.e., Pakistan Hindu Council [PHC] for the tenure 2018-2020, which was held on 13.05.2018. Record further transpires that Suit No.19/2017 was filed to challenge a letter dated 17.12.2016 whereby the plaintiffs of the said suit were suspended from acting as General Secretary and Member Managing Committee of PHC. The said suit was subsequently, upon a compromise application, was decreed, vide order dated 03.04.2018, whereby the parties of the said suit agreed to get election held under the supervision of Nazir of this Court on the election schedule placed through the compromise application. The said compromise decree, through an application moved in the said suit, was subsequently got modified on 10.04.2018 whereby the earlier election schedule mentioned in the decree was amended and, inter alia, the date of election was changed from 29.04.2018 to 13.05.2018. The said compromise decree and subsequent modification order were challenged through JM No.33 of 2018. The said JM was allowed by this court vide order dated 08.05.2018 setting aside the aforesaid two orders i.e. 03.04.2018 and 10.04.2018, passed in Suit No.19/2017. Relevant portion of the said order for the sake of convenience is reproduced as under:-

1. Impugned Orders dated 03.04.2018 and 10.04.2018, whereby Suit No.19 of 2017 was decreed by way of a compromise, and subsequently amended, are hereby set aside.
2. Nazir of this Court who was appointed as Commissioner to conduct the elections is directed to return and handover the Election material etc., to the persons from whom he had received the same.
3. Consequently, Suit No.19 of 2017 stands reverted to its position prevailing before 03.04.2018. Office to list the same according to roster on the next date and shall place copy of this order in the file of Suit No.19 of 2017.

[emphasis supplied]

13. From perusal of the record, it also appears that the order passed in the said JM was challenged in High Court Appeal No.126/2018, however, said appeal was withdrawn, vide order dated 09.05.2018 and as a consequence of the said withdrawal of HCA, the order dated

08.05.2018, passed in the said JM attained finality and the electoral process being conducted by the Defendants was halted. Nonetheless, the defendants instead of calling of election chose to continue with the process and on 09.05.2018, on the very same date when the HCA was withdrawn, Election Committee notified as under:

“This is to notify that the final date for withdrawal of nomination forms for Pakistan Hindu Council Election 2018-2020 is 10<sup>th</sup> May, 2018 from 10:00 AM to 5:00 PM and final list of the candidate who will contest the election will be displayed on the office notice board of Pakistan Hindu Council at 6:00 PM on same day 10<sup>th</sup> May, 2018.”

There is nothing available on the record, which could suggest that any approval of the general body for the said election was obtained after the order passed in JM whereby the earlier election schedule was scrapped. Furthermore, there appears no general invitation for elections as mandated under the Memorandum was circulated to all the members of the society one month before the date fixed for election. More so, it also appears that election was carried out without any formal nomination or scrutiny process after the order of this Court, passed in the aforesaid JM.

Here it would be advantageous to re produce the relevant provisions of the Memorandum of PHC.

“04. FUNCTION OF THE GENERAL BODY:

The General Body shall meet at least twice a year to transact the following business.

a.....

b.....

c.....

d.....

e. To hold election of the Managing Committee as per schedule.”

“06. ELECTION:

a. The Council shall hold its election every 2 years.

b. The Election will be held through votes by majority of the members.

c. Every member shall have the right to one vote, provided his membership stand valid at the time of election provided 180 days of membership from the date of entry is enjoyed by the member on the date of election.

- d. A general invitation for election will be circulated to all the members of the Society, at least one month before the date fixed for elections by the General Secretary or the Election Committee along with
- i. NOMINATION FORM
  - ii. COMPLETE LIST OF ELEGIBLE VOTERS and
  - iii. SCHEDULE OF ELECTION

Containing clear instructions which cannot be altered/amended at any stage before Election”

14. For the foregoing discussions and from the tentative assessment of material available on the record, I am of the considered view that the plaintiffs have made out a case for grant of interim relief as basic ingredients for grant of interim injunction are present in their favour. Accordingly, the injunction application is disposed of in the following terms:

- (i) The result of election of Managing Committee of Pakistan Hindu Council [PHC] for the period 2018-2020, held on 13.05.2018, is suspended till disposal of the present case. Consequently, the defendants including members elected in the said election are restrained from exercising any of the functions and powers and also restrained from interfering in administration of Defendant No.1 [PHC].
- (ii) In view of the above for the interim period, defendant No.1-PHC, within seven days from the receipt of this order, will constitute a four (4) Member Committee, in which both plaintiffs and defendants will nominate two of its members who have not contested the election, for looking after and managing the affairs of the Pakistan Hindu Council (defendant No.1) strictly in terms of the Memorandum of Association of PHC. The said committee will act under the supervision of Nazir of this Court. Fee of the Nazir to carry out the exercise of supervision is fixed at Rs.30,000/- per month to be borne by PHC.

15. It is needless to observe that the aforesaid observations are tentative in nature for deciding the injunction application and shall not have any bearing on the final outcome to the Suit after trial.

Injunction Application [CMA 7823/2018] is disposed of

JUDGE