

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-4454 of 2019

Date

Order with signature of Judge

D/o. matter:

For hearing of CMA No.24080/2021 (151 CPC)

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14.10.2021.

Mr. Wiqas Ahmed Khan, Advocate, who filed vakalatnama on behalf of the petitioner No.1.

M/s. Khalil Ahmed Siddiqui and Muhammad Fahim Zia, Advocate for the respondent No.4.

Mr. Meeran Muhammad Shah, AAG.

Chaudry Wasim Iqbal, Official Assignee

Mukhtiar Ali Solangi, Assistant Registrar, Cooperative Societies-III, Karachi /Election Officer.

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The instant petition was disposed of vide order dated 11.09.2019 by directing the respondent No.2 i.e. the Registrar of the Cooperative Societies to hold /conduct the elections of the Society, as per the Byelaws of the Society, under the supervision of the Official Assignee (OA). Further directions were issued that list of the members of the Society should be prepared within 15 days' time and any member objecting to the said list should file a written application in this regard to the Registrar, who would pass order on the said application filed by the said member in accordance with law. It was also directed that the election should be conducted within 60 days' time and the then management was directed to approach the concerned bank to allow the said management of the Society to withdraw the amounts of the salaries of the employees of the Society, including security guards. The respondent No.2 was also directed that if any petitioner has any other grievance pertaining to the affairs of the Society, the said matter should also be decided by him within a period of 30 days' time, after giving opportunity of hearing to all concerned. It was also directed that a compliance report in this regard should also be submitted to the MIT-II of this Court.

Thereafter the OA furnished a report to the Court that due to certain reasons he is unable to conduct the elections of the Society in a timely manner and the Court, vide order dated 21.11.2019, extended the period for conducting the elections for another two months' time. Subsequently the OA filed another Reference that allowing all the members to cast vote in the elections is beyond the mandate of the Byelaws as only those members are eligible to cast their vote who not only are the members but also possess a plot of the Society, as per the Byelaws of the Society. Thereafter notice on the said Reference was issued by the Bench to the Registrar, vide order dated 20.02.2020. An objection then came on the record from one of the respondents that since 03 years tenure of the management is not complete hence elections could not be held /conducted. It was then decided, with the consent of all the parties, that 03 years period since has been completed, therefore, elections of the entire Managing Committee and Office Bearers be conducted by the Registrar under the supervision of the OA in 04 weeks' time and directions in this regard were issued by the Court, vide order dated 11.08.2020. Thereafter another Reference bearing No.03/2020 was filed by the OA which was also taken on record, vide order dated 08.12.2020. Again a Reference bearing No.04/2021 was filed by the OA, which too was allowed by granting permission to the OA to withdraw an amount from the bank to incur expenses with regard to the publication and other expenses.

Thereafter the present application has been filed by the respondent No.4 on the ground that the Assistant Registrar /Election Officer (**EO**), namely, Mukhtiar Ali Solangi, has illegally allowed and added 61 non-members into the final list of 505 members of the Society, which as per the respondent No.4 was not only illegal but also in violation of the Court's order dated 11.09.2019. Notice thereafter were issued to the OA only, vide order dated 24.09.2021, since on the said date the counsel for the petitioner and

AAG appearing for the respondents No.1,2, 3 & 5 were present in the Court and have waived notices.

M/s. Khalil Ahmed Siddiqui and Muhammad Fahim Zia, Advocates, have appeared on behalf of the respondent No.4 and stated that the action of the EO, namely, Mukhtiar Ali Solangi was not only illegal but also uncalled for as according to them clear directions were issued by this Court vide order dated 11.09.2019 that “list of the members of the Society are to be prepared within 15 days’ time” and hence the inclusion of 61 non-members in the voters list by him is a clear defiance of the order of this Court. They further stated that few days back some 150 non-members of the Society applied to the EO for inclusion of their names and their such request was rejected by him, vide letter dated 09.08.2021, however it is surprising to note that again some 105 non-members moved application for entering their names in voters list and the EO, out of 105 non-members, allowed the application of some 61 non-members for inclusion of their names in the final list of voters without approval of the Election Committee Members. They also stated that in the subsequent list of 105 non-members, 43 persons were those whose names were mentioned in the previous list of 150 non-members and whose applications were already rejected by the EO. It is the contention of the learned counsel that the EO has no authority to review his order as there is no provision under The Sindh Cooperative Societies Act, 2020 (**the Act**) authorizing the EO to review his own order hence, according to them, the inclusion of the names of those persons who are non-members into final voters list is illegal. They further stated that such action was taken by the EO unilaterally without taking into confidence the Members of the Committee hence, according to them, the inclusion of the names of these 61 persons, who are non-members, in the final voters list may be declared illegal.

The OA has filed a Reference No.05 of 2021 and has endorsed the submissions of the learned counsel for the respondent No.4. He stated that previously the EO received application from some 150 non-members for inclusion of their names, which was rejected by him as per his letter dated 09.08.2021. He stated that it is beyond comprehension that how the EO has again entertained the application filed by those claimants and has allowed entering the names of 61 non-members in the final list of 505 members. He also stated that the EO has no authority under the law to review his own order. According to OA the order of the EO allowing the names of these non-members to be included in the final voters list is mala fide. He further stated that the elections are scheduled on 24.10.2021 and has further requested that necessary directions may be issued to the respondent No.2 and the EO that the elections be conducted on 24.10.2021, as scheduled, on the basis of final voters list of 505 members, strictly in accordance with law and to assist him in a legal and lawful manner to supervise the said elections.

Mr. Mukhtar Ali Solangi, EO is present and stated that the previous application of some 150 members was given to him and after going through the same he rejected the same on the ground that the persons who have filed the said applications could not be allowed to cast their vote as they were not eligible. He, however, conceded that subsequently on the application filed by some 105 claimants he allowed the application of 61 persons by exercising his powers under Section 106 of the Act which provision of law, according to him, gives him ample power to review his own order and to decide the matter on any fresh application filed by the members. He stated that he has found the documents filed by those 61 members, who were granted permission to cast their vote and inclusion of their names in the final voters list, is in accordance with law.

Mr. Wiqas Ahmed Khan Advocate has filed vakalatnama on behalf of the petitioner No.1 and stated that whatever orders are passed by this Court would be complied with by the petitioners in its letter and spirit.

We have heard all the learned counsel, the EO and the OA at considerable length and have also perused the record.

Before proceeding any further, we deem it appropriate to reproduce herein below Section 106 of the Act upon which reliance was placed by the EO:

***106. Power of government and the Registrar to call for proceedings of subordinate officers and to pass orders thereon.*** – 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 Government or the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed, Government or the Registrar, as the case may be, may pass such order thereon as to it or him may seem fit.

Perusal of the above Section clearly reveals that firstly the same deals with the powers of the Government and the Registrar to call for the proceedings of subordinate officers and to pass order thereon. The EO was categorically asked that whether he is Registrar, to which he candidly replied in Negative, he however stated that he is EO. He was next posed a question to show from the above referred Section that he has the authority under the law to review his own previous orders. Though he read out the above Section but it is clear that this Section, even if assuming that he is the Registrar, does not give any power to the EO to review his own order or to allow any application previously rejected by him. This Section clearly gives power to the Government or to the Registrar to call and examine the record of any enquiry or proceedings for satisfying themselves with regard to legality or propriety of the decision passed by a subordinate authority but where is the power given to the EO to reverse /review his own order. Where is the reason of the EO that it

has appeared to him that a decision, order or proceedings needs to be modified, annulled or reversed? Moreover even if for arguments' sake it is assumed that the Government or Registrar has the power to modify, annul or reverse any order, whether such power vested in him, being an EO only, to exercise the same or has he the authority or jurisdiction given by the Government or Registrar to review or modify his own order on his own accord. His duty, as noted from the record, was to assist the OA in conducting fair and transparent elections, as directed by this Court through the order dated 11.09.2019 and subsequently endorsed by various other orders passed by this Court. It is thus clear that the EO has transgressed his powers in reviewing his own previous order and giving right to 61 non-eligible persons to cast their vote and for inclusion of their names in the final approved list of 505 members. The manner in which the EO has proceeded in the matter smacks of malafide and arbitrariness on his part as, in our view, the said person has transgressed his jurisdiction and powers which were not available to him and thus, in our view, his order dated 10.09.2021 could not be considered to be a lawful order, the same therefore stands vacated and his directions with regard to inclusion of the names of 61 non-members in the final voters list hereby stands set aside. We, therefore, under the circumstances, allow this application and also take the OA's Reference No.05 of 2021 on record and direct him to proceed to supervise the elections on 24.10.2021, as already scheduled, on the basis of the final voters list comprising of 505 members only. The respondent No.2 is also directed to assist the OA in holding fair and transparent elections on the said date without causing any hindrance /delay in accordance with law.

Before parting with the order, we would like to state that the conduct in which the EO, namely, Mukhtiar Ali Solangi has proceeded in the instant matter clearly denotes and demonstrates that he is not fit to hold the post which he is occupying today as he has blatantly acted illegally and has misused his powers. We, therefore, under the circumstances, direct the

Secretary Cooperative Societies to conduct a departmental enquiry against Mukhtar Ali Solangi strictly in accordance with law and to furnish his report within a period of 30 days from the date of receipt of this order. Let a copy of this order be sent to the said Secretary for information and compliance.

JUDGE

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