

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-3056 of 2023

Date	Order with signature of Judge
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FRESH CASE.

1. For orders on Misc. No.14526/2023.
2. For orders on Office Objection No.15&16.
3. For orders on Misc. No.14527/2023.
4. For orders on Misc. No.14528/2023.
5. For hearing of main case.

19.06.2023.

Mr. Fida Hussain Qureshi, Advocate for the Petitioner.

MOHAMMAD ABDUR RAHMAN, J. - This is a Petition maintained under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, seeking that action be taken by the Registrar of Joint Stock Companies i.e. Respondent No. 2 as against various office bearers i.e. the Respondents No. 4 to 7 of a Society as the “Jama Masjid Moti” for fabricating the record relating to the elections of the Society.

2. Jama Masjid Moti is built on Plot No.ST-05, Block-8, Clifton, Karachi Development Authority, Scheme No.5, Karachi, is purportedly a Society incorporated under the Societies Registration Act, 1860, which is regulated by the Respondent No.2. As per the Clause 8 of the Article of Association of the Jama Masjid Moti:

“ ... 8. Election of the office bearers of the Masjid shall be conducted after each 3 year period.

3. Learned counsel for the Petitioner contends that he was an elected representative of the Managing Committee of the Jama Masjid Moti for the election cycle from 2015 to 2018 and was not elected at the last elections of the

Society that were held on 10 January 2018 from the years 2018 to 2021. He states that he has now come to know that the Respondents No. 4 to 7 have in a clandestine manner fabricated the entire documentation relating to the process and results of the elections that were be held for the election cycle 2021 to 2024 and being aggrieved by such an illegality he has maintained this Petition seeking the following relief:

- “ ...
1. To direct the Respondent No.4 to 7 along with other office bearers to immediately leave their respective seats of Managing Committee of Respondent No.3 which they are holding illegally.
 2. To direct the Respondent No.2 to conduct Elections of Managing Committee of Respondent No.3 fairly and justly so that rightful candidate can hold the affairs of managing committee of Respondent No.3.
 3. To direct the Respondent No.6 and 7 to provide statement of expenditures which they have spent illegally.
 4. Any other relief(s), this Hon'ble Court may deems fit and appropriate in the circumstances of the case may also be granted.”

The learned counsel for the Petitioner has contended that as the election results for the election cycle for the period from 2021 to 2024 had been fabricated by the Respondents No. 4,5,6 and 7, it is incumbent on the Respondent No. 2, being the regulator of Societies, to take action to redress this wrong. The Advocate for the Petitioner did not refer to or rely on any case law during his arguments at the time of the hearing of this Petition.

4. We have heard the Advocate for the Petition and perused the record. While understanding that the Petitioner may have a valid concern regarding the fabrication of the documentation confirming the elections process of the Society and the results of that election for the election cycle from 2018 to 2021, without dilating on the merits, we were particularly concerned with the delay that has been made by the Petitioner in maintaining this Petition. Admittedly, the election of the Society that the Petitioner is impugning is for the term commencing in 2021

to 2024 and will end in the early party of the year 2024. The Petitioner who is fully aware of the election cycle, as he himself had contested the elections and stood elected representative of the Managing Committee of the Jama Masjid Moti from the years 2016 to 2018, would have always been aware of the fact that the next elections should have been held in early 2021. Despite being aware of this fact, he has taken no action for 2 & 1/2 years and at the “fag end” of the election cycle has approached this Court to seek relief that the election for the year 2021 should be held null and void as the election was in fact never held and further seeks directions be given to the Respondent No. 2 to conduct elections of the Managing Committee “fairly and justly”.

6. The principle of laches has been very aptly summarised by the Supreme Court of Pakistan in the reported case of **Ardeshir Cowasjee versus Karachi Building Control Authority (KMC), Karachi**¹ and in which it was held that:²

“ ... In our view, laches per se is not a bar to a Constitutional Petition. There is marked distinction between delay in filing of a legal proceedings within the period specified in an Article of the Schedule to the Limitation Act, 1908 and the delay in filing of a Constitutional petition for which no statutory period is provided for. In the former case delay of each day is to be explained by furnishing sufficient cause for seeking condonation of delay under section 5 of the Limitation Act in filing of a legal proceedings after the expiry of the statutory period. Whereas, in the latter case, the delay or the question of laches is to be examined on equitable principles for the reason that grant of Constitutional relief is discretionary relief and the Court may decline to process into service its Constitutional jurisdiction if it would be inequitable in keeping in view the conduct of a petition. The question of delay or laches is to be considered with reference to the facts of each case. Delay/Laches of several years can be overlooked in a Constitutional petition if the facts of the case and dictates of justice so warrant as pointed by this Court in the case of The Chairman G. District Screening Committee, Lahore and another vs. Sharif Ahmad Hashmi (PLD 1976 SC 258) (supra.), or the delay/laches of few months may be fatal to a Constitutional petition.”

¹ 1999 SCMR 2883

² *Ibid* at pg. 2907-2908

7. The Respondents No. 4 to 7 have nearly completed the tenure as members of the Managing Committee of the Jama Masjid Moti and after which elections should be held either at the end of this year or in the early part of the year 2024. We see little or no purpose in addressing the Petitioner's grievance where the term of the Respondents Nos. 3 to 7 is very close to expiring and which grievance has not been addressed at any forum by the Petitioner for nearly 2 1/2 years; clearly barring this petition as suffering from laches. It would seem that the only benefit that the Petitioner would be getting by maintaining this Petition is "political mileage" in the upcoming elections of the Society and which would amount to using the forum of this Court for his personal gain and which is a further ground for us to refuse to exercise our discretion under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

8. For the foregoing reasons we are clear that this Petition is misconceived and is not maintainable. Hence, while granting the application for urgency, we hereby dismiss this Petition *in limine*, along with the other miscellaneous applications with no order as to costs.

JUDGE

JUDGE

MUBASHIR