

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-1545 OF 2024

Date Order with signature of Judge

Present:

Mr. Justice Aqeel Ahmed Abbasi, C.J.
Mr. Justice Abdul Mobeen Lakho.

Zaheer Alam & others.....Petitioners

Versus

Provincial Assistant Registrar & othersRespondents

Date of hearing 3rd April, 2024

Mr.Aamir Zaheer Mirza, Advocate for the Petitioner.

Abdul Mobeen Lakho, J. The petitioners have brought this petition with the following prayers:-

“(I). That this Honorable Court may be pleased to set aside and declare the election dated 29-02-2024, illegal and unlawful and may this Honorable Court also declare the notification dated: 04-03-2024, issued by the Respondent No.2 / Election Commissioner, illegal, unlawful, regarding successful candidate of NEDEA Election-2024-26.

(II). To declare the notification dated 04-03-2024, illegal, unlawful in violation of clause 4, sub-clause (a) of the bye-laws/article, dated: 15- 05-1981 of NEDEA Non-gazetted Employees Association.

(III). To direct the Respondents No.1 to 3 to delete / struck off the names of the grade 16 employees from electoral list from the NEDEA elections.

(IV). To direct the Respondents No.1 to 3 to conduct Re-Elections after excluding/deleting the names of grade 16 employees from the electoral list.

(V). To Declare appointment of Election Commissioner / Respondent No.2 as well as Respondent No.3 / Registrar NED University, illegal unlawful without any lawful authority.

(VI). To declare the acts of Respondent No.5 and 6 not submission of audit report and intimation of holding of election 2024 of NEDEA illegal and unlawful.”

2. That the Petitioners, employees of the NED University of Engineering and technology have challenged the NEDEA Election-2024 held on 29-02-2023 under the supervision of Election Commissioner / Respondent (Dr. Muhammad Aslam Bhutto),

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who after conducting the election issue the notification of successful candidate on 04-03-2024, whereas, the petitioner No.1 submitted an application on 06.02.2024 before Respondent No.1 with the following submissions:-

"1. That the NEDEA is registered for electoral votes from 1 grade to 15 and the grades 16 employees have been included in the electoral voting list, almost 160 grade 16 employees.

II. That it was submitted that the grade 16 employees may be excluded from the electoral list.

III. That the establishment of the NEDEA may be restrained from interfering in the elections.

IV. That the audit report of the last 6 years may be submitted before this Honorable forum and finally direct them to conduct the Election in accordance with the bye-laws registered with the Registrar Joint Stock Companies Sindh, Karachi."

On 23-02-2024 the Respondent No.1 (provincial Assistant Registrar Joint Stock Companies, Sindh, Karachi) passed the following order:-

"As per the aforesaid position, it has clearly been proved that the proper and required documents of intimation of holding elections of the managing committee of every tenure / every year as well as the audit of accounts not been submitted in this office and as such all the acts and activities of the above said association cannot set to be proper and legal therefore any so called election commissioner or any such so called office bearer cannot set to be legal position thus it would be appropriate that the general body meetings can be called wherein the Election commissioner or election committee should be constituted with the two third majority of the total general body meeting and after holding the free and fair and transparent election of the managing committee i.e. by providing the full chance / opportunity to the registered members either to contest the said election or cast the vote from by every registered member, none can be deprived from the legal / legitimate right after the holding of election, the intimation documents may be submitted according to the attached renewal sheet, which is required to be readout and understand very clearly, the above said instruction / advice must be communicated to all concerned for information and further necessary action accordingly."

The Election commissioner (Respondent No.2) on 13-02-2024 rejected the application of the Petitioner No.1 for excluding the BPS-16 employees from the electoral list on the ground of late submission, however, earlier Respondent No.2 vide order dated: 15.05.2018, passed the order for deletion of the BPS-16 employees from the final electoral list for NEDEA Elections. It has also been stated that the recounting request of the petitioner was also dismissed by Respondent No.2 which submitted within 24 hours on the ground of time barred. According to the petitioner, the Ex-president and Ex- General Secretary with malafide intention did not submit any audit report to Sub-

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Registrar Joint Stock Companies, Sindh, Karachi as per the laws, neither any intimation of holding of elections have been given, hence deliberately they committed illegality to favor the Awam Dost panel with the connivance of Election Commissioner, Registrar NED University.

3. Learned counsel for the petitioners argued that the impugned elections are liable to be set aside by virtue of Clause 4, sub Clause (a) of by-laws of the Association, in which the participation in election can only be taken by the employees of grade 1 to 15. He also referred to the Notification of successful candidate dated 04-03-2024 and argued that the same is not accordance with the law, as the said elections are illegal, unlawful by virtue of orders dated 23-02-2024, issued by the Respondent No.1 (Provincial Assistant Registrar, Joint Stock Companies, Sindh, Karachi), wherein, it has been declared that without intimation to this office every election and so called Election Commissioner (Respondent No.2) having no legal entity and value. According to learned counsel for the petitioners by virtue order dated 15.05.20218 passed by Respondent No.2 the names of grade 16 employees were struck off from the electoral list and the Registrar of NED University has no authority to appoint Election Commissioner for holding of Election-2024 without intimating the Sub-Registrar Joint Stock Companies, Sindh, Karachi, therefore, prayed that Election dated 29.02.2024 may be declared as illegal and unlawful.

4. Heard learned counsel for the petitioners and perused the record with his assistance. In order to resolve the subject controversy, the relevant law to this matter is the NED University of Engineering & Technology Act, 1977 ("the Act") which provides internal mechanism for the disputes taking place within the University. Likewise, **sub-section 1** of Section 21 says that '*where a member has been elected, appointed or nominated, to any Authority or body for any fixed terms under this Act, such term shall unless the date of its commencement has been prescribed, be reckoned from the date of the election, appointment or nomination, as the case may be*'. Whereas, **section 22** of the Act deals with **disputes about membership of Authorities**. The section states as under;

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“When a dispute arises if any person is eligible to become or continue as member of any Authority, it shall be referred to a committee consisting of the Vice-Chancellor, the most Senior Dean and the Chief Justice of the High Court of Sind or a Judge of the High Court nominated by him, and the decision of such committee shall be final.”

If any dispute arises regarding the election, appointment or nomination of any member to any Authority or body, the dispute has to be referred to the committee as discussed above. In addition to this, section 10 of the Act discretionary power to the Chancellor with regard to an inspection or inquiry in respect of any affair or matter directly or indirectly concerned with the University. It states as under:-

“The Chancellor may cause an inspection or inquiry to be made in respect of any affair or matter directly or indirectly concerned with the University and appoint 1[“one or more persons “in consultation with Government”] to conduct such inspection or enquiry.”

Sections 10 and 22 of the Act provides for internal mechanism and forums for resolution of disputes/issues arising within the University, which would be necessary and appropriate for the petitioner to reach out to them for resolution of its disputes. Apart from this, Section 49 of the Act clearly places an embargo upon the jurisdiction of the Courts to entertain legal proceedings; which states as under:-

“No court shall have jurisdiction to entertain any proceedings, grant any injunction or make any order in relation to anything done or purported to have been done or intended to be done under this Act.”

Furthermore, section 50 of the Act also states under;

“No suit or legal proceedings shall lie against Government, the University or any Authority, officer or employee of Government or University or any person, in respect of anything which is done or purported to have been done or intended to be, or has been, “done” 1[“ in good faith”] “under” this Act.”

4. As the Act provides internal forums are to resolve the internal disputes and places a bar upon the jurisdiction of the courts; similarly, the case laws also do not favour the interference of courts in internal affairs/matters and policies of Educational Institutes or Universities. In the case of *Dr. Fateh Muhammad Burfat & others....vs..... Province of Sindh & others (2021 MLD 933)*, this Court has held as under:-

“30. It is noted from the record that all the aforementioned allegations (embezzlement of University Funds) fall within the ambit of disputed

questions of facts and to prove such questions of fact it is necessary to record the evidence and examination of record of University of Sindh. It is settled law that question of fact which requires recording of evidence and examination of record cannot be gone into by this Court in exercise of its constitutional jurisdiction. We have also observed that an inquiry committee has also been constituted by the competent authority viz Chief Minister Sindh to probe the allegations levelled against Respondent No.5 (Dr. Fateh Muhammad Burfat) hence, instant petition filed by petitioner Dr. Arfana is devoid of merits. However, she is at liberty to approach the competent forum in accordance with law."

5. Considering the above, the internal affairs such as elections may also be factual disputes which will require recording of evidence and examination of record which cannot be done in constitutional jurisdiction. This principle has also been reiterated by the Honourable Supreme Court of Pakistan in the case of *Special Secretary-I (Law and Order), Home and Tribal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar & Othersvs.....Fayyaz Dawar (2023 SCMR 1442)*.

6. The Constitution Petition against internal affairs of NED University is deemed not maintainable due to the internal mechanism outlined in the NED University of Engineering & Technology Act, 1977. Section 21 of the Act deals with the commencement of terms of members of Authorities, while Section 22 establishes a committee to resolve disputes regarding membership. This committee consists of the Vice-Chancellor, the most Senior Dean, and the Chief Justice of this Court or a nominated Judge. Additionally, Section 10 grants discretionary power to the Chancellor for inspection or inquiry related to university affairs and Sections 10 and 22 provide internal forums for dispute resolution, whereas, the Section 49 of the Act barring court's jurisdiction over matters under the Act. Section 50 provides immunity from legal proceedings for actions undertaken in good faith under the Act. The case laws also manifest that these internal affairs and disputes will require recording of evidence and examination of record which cannot be done in constitutional jurisdiction. Therefore, the petitioner should utilize internal mechanism/forum provided in the Act where these disputes can be entertained and decided or resolved.

7. In view of the foregoing reasons, instant petition was dismissed in limine along with listed applications vide short order dated 03.04.2024, which

Judicial Officer

reads as under:-

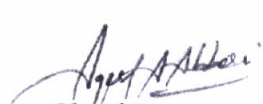
"Dated 3rd April 2024

Mr. Aamir Zaheer Mirza, Advocate for Petitioners.

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1. Urgency granted.
 2. Exemption granted subject to all just exceptions.
 - 3&4. We have heard the learned counsel for the petitioner and perused the record of this case.

For the reasons to be recorded later on, instant Constitution Petition is dismissed in limine along with listed application. However, petitioners may be at liberty to approach the relevant forum for redressal of their grievance."


Judge


Chief Justice