

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-3970 of 2024

[Government Teachers Cooperative Housing Society Ltd. v. Province of Sindh & others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Before;
Mr. Justice Zulfiqar Ali Sangi;
Mr. Justice Abdul Hamid Bhurgri.

- 1. For orders on office objections
- 2. For orders on CMA No.19201/2024.
- 3. For hearing of CMA No.331/2025.
- 4. For hearing of CMA No.19110/2024.
- 5. For hearing of CMA No.19102/2025.
- 6. For hearing of CMA No.17441/2025.
- 7. For hearing of main case.

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Date of hearing:- 28.08.2025

Mr. Syed Shahbal Ali, Advocate for the petitioner.

Mr. M. Zeeshan Abdullah, Advocate a/w Ms. Sidra Hussain,
Advocate for applicants.

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Abdul Hamid Bhurgri, J.- The Petitioner, by way of this constitutional petition, has assailed the Nazir’s revised list of candidates for the elections of the Government Teachers Cooperative Housing Society Limited, Karachi (hereinafter referred as “Society”), contending that the Nazir acted in excess of his mandate by permitting rectification of defective nomination papers. It is urged that, pursuant to an order dated 02.08.2024 passed in Suit No. Nil (-1822) of 2023, the Court directed that the process recommence from the stage of scrutiny of nomination papers, as the Nazir or his representative had not been present at the earlier scrutiny. The Petitioner avers that the election officer, contrary to the express mandate of the Bye-laws of Teachers Co-operative Housing Society Limited, permitted candidates to rectify errors in their nomination papers, thereby vitiating the process. Reliance is placed upon Bye-law No.47(C) and 50(A). Accordingly, the Petitioner prayed for suspension of the final list issued on 13.08.2024 and for the holding of elections strictly in accordance with the Bye-laws.

2. This Court, vide order dated 19.08.2024, suspended the impugned list of 13.08.2024 prepared by the Assistant Registrar,

Cooperative Societies-VI, and directed that elections proceed under the Bye-laws of the Society on the basis of the earlier list dated 28.06.2024, under supervision of the Nazir, preferably within one month. Objections, if any, were to be decided by the Nazir in consultation with the Registrar, Cooperative Societies, Karachi.

3. Subsequently, three individuals—namely, Rabbani, S. Tariq Sardar and Shakeel Uddin—filed an application, CMA No.19202/2024, under Section 12(2) read with Section 114 and Order XLVII Rules 1 & 2 CPC, invoking Article 199 of the Constitution. They alleged that the interim order had been procured by fraud and misrepresentation, contending that the Petitioner had withheld material facts and misled the Court. It was argued that the list produced by the Petitioner with the petition bore only the Assistant Registrar's signature, creating the impression that the Nazir had not been consulted, whereas the authentic list bore the signature of Muhammad Jahangir Khan, Nazir of this Court, and reflected the acceptance of fifteen nomination papers. It was further argued that in the Nazir's earlier list of 26.08.2024 only nine nominations had been accepted, and with nine member-seats available those candidates stood elected unopposed. They, therefore, prayed that the interim order be recalled.

4. Learned counsel for the applicants, Mr Zeeshan Abdullah, submitted that the interim order had been obtained through fraud and misrepresentation, the Petitioner having suppressed material orders and facts pertaining to the pending suit. He maintained that the list annexed to the petition was manipulated, inasmuch as it omitted the Nazir's signature, though the authentic list signed by the Nazir showed fifteen papers accepted. He contended that this deliberate omission misled the Court into granting relief. Counsel further submitted that since the suit was pending, the Petitioner's remedy lay before the seised Court, or by impugning the order of 02.08.2024. He thus urged that the interim order dated 19.08.2024 be recalled.

5. Conversely, learned counsel for the Petitioner, Mr Syed Shahbal Ali, submitted that the order dated 19.08.2024 was passed after proper appraisal of the facts placed before this Court. He drew

attention to the memorandum of petition, which expressly disclosed the pendency of the suit and the orders passed therein. He argued that the order of 02.08.2024 mandated the Nazir solely to scrutinise the nomination papers and conferred no authority to permit rectification. The Nazir's allowance of corrections, he contended, was contrary to the Bye-laws. Reference was made to Bye-law 47(C), which requires nomination forms to be duly completed, signed, and submitted at least one week prior to the Annual General Meeting, and to Bye-law 50(A), which restricts eligibility to members belonging to the Directorate of Education, Karachi. It was argued that permitting rectification after submission seriously prejudiced the Petitioner. Learned counsel further submitted that the applicants' application under Section 12(2) CPC was not maintainable, since all three applicants had participated in the electoral process: Rabbani and S. Tariq Sardar were elected unopposed, while the third, Shakeel Uddin, whose form had been rejected, as such he has no locus standi. Reliance was placed on *Hafiz Malik Kamran Akbar v. Muhammad Shafi (Deceased)* through L.Rs. (PLD 2024 SC 262).

6. We have heard counsel for both sides and examined the record. It is evident from the order of 02.08.2024 that the Nazir's authority was confined strictly to scrutiny of nomination papers and did not extend to allowing rectification after submission. To permit such rectification amounts to conferring a substantive right neither envisaged by the Bye-laws nor authorised by the Court's order. Bye-law 47(C) of Society stipulates that every nomination form must clearly record the nominee's particulars and be duly signed by both the proposer and the nominee signifying willingness to serve. It does not permit amendment after submission. The Nazir, therefore, exceeded his mandate by allowing rectification. Section 47(C) and 50(A), are reproduced as under:-

47(C): Nomination for President and the Committee must be in writing and received at the Registered Office of the Society not less than One Week before the Annual General Meeting. Every nomination must state clearly the full name, address and occupation of every member nominated and be signed by the Member who nominates him and by the member nominated signifying his willingness to act as President or on the Committee.

50(A): Only the members who belong to Directorate of Education, Karachi, Government of Sindh, are eligible to be elected as Committee men or President.

7. As to the allegations of fraud, we find no suppression by the Petitioner. The petition disclosed the pendency of the suit and the orders passed therein. The order of 19.08.2024 was not premised upon the Nazir's failure to sign the list, but rather upon the Nazir having exceeded his authority. The objections raised under Section 12(2) CPC therefore lack merit. It is settled law that allegations of fraud must be specifically pleaded and proved by cogent evidence; mere irregularity, misinterpretation or even erroneous exercise of discretion does not amount to fraud. As reaffirmed by the Apex Court in plethora of judgments that fraud entails deliberate concealment and conscious misrepresentation designed to mislead the Court. No such material has been produced in this case.

8. Further, the jurisdictional boundary must be respected: the Nazir was directed only to scrutinise papers for compliance. Scrutiny denotes examination for conformity, not liberty to allow post-submission rectification. To allow otherwise would be tantamount to rewriting the rules of the Society, any such exercise is beyond jurisdiction and is void. The Nazir, by permitting rectification, clearly acted beyond his remit.

9. The conduct of the applicants also disentitles them. They voluntarily participated in the electoral process—two were returned unopposed, and one, has been disqualified due to his own mistake. Having accepted the process and its outcome, they cannot now approbate and reprobate. The maxim *allegans contraria non est audiendus* squarely applies (A person who alleges things contradictory each other is not to be heard squarely applies).

10. Elections have since been conducted pursuant to this Court's interim orders on the basis of the earlier merit list. We hold that such elections are lawful and valid. The application under Section 12(2) CPC is dismissed. The newly elected body shall continue to manage the Society's affairs in accordance with law and conduct the elections

as per schedule. The petition, along with all listed applications, accordingly stands disposed of.

JUDGE

JUDGE

Ayaz Gul