SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction**]**

PRESENT:
Mohammad Azam Khan, C.J.
Ch. Muhammad Ibrahim Zia, J.
Raja Saeed Akram Khan, J.

Civil Appeal No.46 of 2014
(PLA filed on 30.12.2013)

Azad Jammu & Kashmir Rural Support Programme (AJKRSP) through Attiq-ur-Rehman (Chief Executive Officer), House No.D-95, Street No.15, Upper Chatter Housing Scheme, Muzaffarabad.

……APPELLANT

VERSUS

1. Prime Minister of Azad Jammu & Kashmir through Principal Secretary to the Prime Minister, Prime Minister's Secretariat, Lower Chatter, Muzaffarabad.
2. Azad Government of the State of Jammu & Kashmir through Chief Secretary to Azad Government Civil Secretariat, Lower Chatter, Muzaffarabad.
3. Additional Chief Secretary (Development) Azad Govt. of the State of Jammu & Kashmir, Civil Secretariat, Muzaffarabad.
4. Secretary Planning & Development Department, Azad Govt. of the State of Jammu & Kashmir, Civil Secretariat, Muzaffarabad.

5. Secretary Services & General Administration Department, Azad Govt. of the State of Jammu & Kashmir, Civil Secretariat, Muzaffarabad.
6. Secretary Law, Justice, Parliamentary Affairs and Human Rights Department, Azad Government of the State of Jammu & Kashmir Civil Secretariat, Muzaffarabad.
7. Registrar of Companies, Azad Government of the State of Jammu & Kashmir, Lower Chatter, Muzaffarabad.
8. Mian Ikhlaq Rasool son of Mian Ghulam Rasool r/o Lower Plate, Muzaffarabad.
9. Mr. Alam Din Bullo, Chief Secretary, Government of Azad Jammu & Kashmir, Civil Secretariat, Lower Chatter, Muzaffarabad.
10. M. Yousaf Khan, Secretary Finance, Azad Government of the State of Jammu & Kashmir, Civil Secretariat, Lower Chatter, Muzaffarabad.
11. Mr. Fayyaz Akhtar Chaudhary, Secretary Local Government & Rural Development Azad Government of the State of Jammu & Kashmir, Civil Secretariat, Lower Chatter, Muzaffarabad.
12. Mr. Manzoor Ahmed Kayani, Secretary Agriculture, Azad Government of the State of Jammu & Kashmir, Civil Secretariat, Lower Chatter, Muzaffarabad.
13. Khawaja Akhtar Hussain son of Khawaja Khalil-ur-Rehman r/o District Neelum.
14. Mir Abdul Rashid s/o Mir Muhammad Khan r/o Muzaffarabad.
15. Sardar Muhammad Nasim Khan s/o Sardar Mir Zaman r/o District Bagh.
16. Prof. Dr. Abdul Hamid s/o Peer Muhammad Abdullah r/o Haveli.
17. Sh. Liaqat Hussain s/o Nazir Hussain r/o District Poonch.

18. Sardar Muhammad Hanif s/o Sardar Ali Bahadur Khan r/o District Sudhnoti.
19. Shoukat Hussain s/o Muhammad Aslam r/o District Kotli.
20. Imtiaz Hussain Raja, Advocate s/o Muhammad Riaz Khan, r/o District Mirpur.
21. Muhammad Latif Chaudhary, s/o Ch. Muhammad Sain, r/o District Bhimber.
22. Sahibzada Aftab Alam s/o Sahibzada Muhammad Alam r/o Hattian Bala.

….RESPONDENTS

[On appeal from the judgment of the High Court dated 29.11.2013 in Writ Petitions No. 1447 /2009 & 364/2013]

FOR THE APPELLANT: Mr. Abdul Rashid Abbasi, Advocate.

FOR THE RESPONDENTS: Raja Akhlaq Hussain Kiani, Additional Advocate-General and Mr. Muhammad Yaqoob Khan Mughal, Advocate.

Date of hearing: 15.02.2017.

JUDGMENT:

Mohammad Azam Khan, C.J.– The above titled appeal by leave of the Court arises out of the judgment of the High Court dated 29th

November, 2013, whereby writ petition No.364 of 2013, filed by the appellant, herein, has been dismissed along with another writ petition.

2. Necessary facts for disposal of this appeal are that the appellant, herein, filed writ petition No.364 of 2013, alleging therein, that a Company by the name of AJK Rural Support Programme (AJKRSP) was incorporated and registered under section 42 of the Companies Ordinance, 1984 on 29th October, 2007. According to the provisions of Articles of Association, the first Board of Directors has to hold the office till the first Annual General Meeting, (AGM) and the first AGM had to be convened within a period of 18 months but the same was convened on 5th August, 2009 and new Directors of Company were elected. Shoaib Sultan was elected as Chairman, Board of Directors and Attiqu-ur-Rehman was appointed as Chief

Executive Officer of the Company in the year, 2009. A summary was submitted to the Prime Minister for taking over the Company. The Chief Secretary submitted a note on 5th August, 2012. The Prime Minister initially issued the order but later on, the order was recalled. On 23rd February, 2013, the Prime Minister, respondent No.1 removed the Chief Executive and appointed new Board of Directors. Mian Ikhlaq Rasool, respondent No.8 was appointed as Chief Executive. The appellant, challenged the said order of the Prime Minister and also challenged the minutes of meeting convened by the newly appointed Board of Directors on 12th March, 2013 by way of writ petition. After necessary proceedings the full bench of the High Court dismissed the writ petition along with another writ petition vide impugned judgment on 29th November, 2013, hence this appeal by leave of the Court.

3. Mr. Abdul Rashid Abbasi, Advocate, counsel for the appellant argued that under the provisions of the Companies Ordinance, 1984, the Article/Memorandum of Associations, the directors of the companies are elected for a period of three years. The Prime Minister has no power to terminate the Board of Directors or the Chief Executive Officer. It is only the Board of Directors which has power to terminate the service of the Chief Executive Officer. The learned counsel submitted that the Prime Minister, Chief Secretary and other Officers were initially the directors of the Company, who after the first AGM were no more directors /Chairman of the Company and have no powers to pass any order. The point was specifically argued before the High Court but the High Court has not resolved the same. The learned counsel submitted that the act of the respondents was without jurisdiction and void. It is in

violation of the fundamental rights No.13 and 14. The respondents were never elected as Directors of the Company, they assumed the role of Directors of the company under the garb and authority of their public offices. The point was specifically argued in the High Court but the High Court failed to resolve the same. The learned counsel further argued that the Chief Executive Officer of the Company appointed by the Board of Directors can only be removed by the 3/4th majority of the Board of Directors. The removal of the Chief Executive Officer is ab-initio void and without jurisdiction. He lastly argued that the order has been passed by the Prime Minister without hearing the appellant/Company, as such it offends the celebrated principle of *audi alteram partum*. He requested for acceptance of the appeal and setting aside the judgment of the High Court.

4. While controverting the arguments, Mr. Muhammad Yaqoob Khan Mughal, Advocate, counsel for the private respondents, defended the judgment of the High Court and submitted that the writ petition in the High Court as well as the appeal in this Court has been filed by an unauthorized person. The writ petition and the appeal have been filed by the AJKRSP through Attiq-ur-Rehman (Chief Executive Officer), who was not authorized to file the same. The learned counsel submitted that the Chief Executive Officer can challenge his termination order in personal capacity. He is not authorized to file the writ petition and appeal in this Court on behalf of the Company. The writ petition was rightly dismissed by the High Court. The appeal merits dismissal on the sole ground. He submitted that if the Directors of the company are aggrieved from any order they may avail the remedy available to them under the

Companies Ordinance, 1984. The High Court has correctly declared that alternate remedy under the Companies Ordinance, 1984, is available to the petitioner/appellant. He requested for dismissal of appeal.

5. Raja Akhlaq Hussain Kiani, Additional Advocate-General argued that the writ petition has been filed through an unauthorized person. It was not competently filed and merited dismissal on the sole ground. Similarly the appeal has been filed without any authority by the so-called Chief Executive Officer, therefore, the same merits dismissal. He argued that the order of the Board of Directors has been challenged by the appellant in the writ petition and in the appeal. The Board of Directors has not been arrayed as party in the line of the respondents. Without arraying the Board of Directors as party in the line of the respondents,

the appeal is not competent. The learned Additional Advocate-General lastly argued that in the matters of Board or removal of Directors of the Company or Officer, the alternate remedy has been provided in the Companies Ordinance, 1984, which is an efficacious remedy. In presence of the said remedy, the writ petition is not competent. He requested for dismissal of the appeal.

6. We have heard the learned counsel for the parties, as well as the learned Additional Advocate-General and perused the record.

7. Through notification dated 16th July, 2007, under the Memorandum and Articles of Association, the establishment of the AJKRSP as a Company was approved and its registration was sanctioned. The AJKRSP was registered under Article 32 of the Companies Ordinance, 1984 as Company Limited by Guarantee. Under

clause (vi), of Article 1 of the Articles of Association of AJKRSP the Board is defined as (the Board of the Directors for the time being of the company acting at a meeting through a committee of Directors). Article 32 provides the powers and duties of the Board. For proper appreciation the same is reproduced as under:-

> "32. The business of the Company shall be managed by the Board who may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as are not, by the Ordinance or by these Articles, required to be exercised by the Company in General Meeting subject nevertheless to the provisions of the Ordinance or these Articles and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the Company in General Meeting, but no regulation made by the Company in General Meeting shall invalidate any prior act of the Board which would have been valid it that regulation had not been made. The Board shall exercise all such powers as are vested in them by Section 196(2) of the Ordinance."

The bare reading of Article 32 shows that all the powers of the company are vested in the Board and the Board has to conduct the business of the Company. The Board shall exercise the powers subject to the provisions of the Companies Ordinance and Articles/Memorandum of Association. Apart from the powers vested in the Board, the general powers vested in the Board under Article 32, specific powers have been conferred on the Board in the matters falling in Article 33 including the appointment of attorney and the staff prosecuting on behalf of the company. We deem it necessary to reproduce Article 33 which reads as under:-

> "33. Without prejudice to the generality of the powers conferred on the Board by Article 32, the Board shall have the following powers:
> a) .....
> b) .....
> c) .....
> d) .....
> e) .....

f) …….
g) To appoint any person or persons to be attorney or attorneys of the Company for such purposes and with such powers, authorities and descriptions and such period and subject to such conditions as may be thought fit.
h) …….
i) …….
j) …….
k) To institute, prosecute, compromise, withdraw or abandon any legal proceedings by or against the Company or its officers or otherwise concerning the affairs of the Company.
l) …….
m) …….
n) …….
o) …….
p) …….
q) To delegate its powers to one or more director(s) or director(s) and officer(s) of the company jointly for efficient conduct of company's business."

Clause 'g' of Article 33 confers powers in the Board to appoint attorney or the attorneys to the Company for specific matters and specific period and imposed a condition on such authorities as the Board thought fit. Clause 'k' confers powers in the Board to institute,

prosecute, compromise, withdraw or abandon any legal proceedings by or against the Company or otherwise concerning the affairs of the Company.

A combined reading of above referred clauses 'g' and 'k' shows that the powers for institution of the proceedings in a Court of law on behalf of the Company vested in the Board of Directors. The powers vested in the Board may be exercised by the Board itself or the Board under clause 'q' of Article 33 may delegate the powers to one or more directors and officers to the Company jointly for efficient conduct of the company's business. The directors may exercise only such powers which are vested in them but the powers of the Board cannot be exercised by an officer of the Company who is not vested with the powers. Only the Board of Directors has powers to institute the proceedings in a Court of law and none-else. The Company never

authorized the Chief Executive Officer/appellant to file a writ petition and never appointed the attorney for acting on behalf of the company. The writ petition has been filed by an unauthorized person. The writ petition in the High Court as well as the appeal before this Court has not competently been filed and merit dismissal on the sole ground.

8. In the writ petition the petitioner/appellant herein, challenged the minutes of meeting, decision and memorandum of the Board of Directors. It has been prayed that the same may kindly be declared against law, based on mala-fide and without lawful authority. The actions of the Board have been challenged but the Board of Directors has not been arrayed as party in the line of the respondents. Without arraying the Board of Directors as party in the line of the respondents,

the writ petition was not maintainable. This Cout in the case reported as *Mirza Lal Hussain vs. Custodian of Evacuee Property and others* [1992 SCR 214], in paras 13 and 14 of the report observed as under:-

> "13. Another point of fundamental importance was raised by M. Abdul Ghafoor Qureshi that Rehabilitation Commissioner, Deputy Rehabilitation Commissioner and Assistant Rehabilitation Commissioner had not been made a party in the writ petition although the orders passed by them were sought to be quashed. On this point the view of this Court has been expressed in case reported as **Muhammad Resham Khan v. Chairman Inspection Team** [PLJ 1990 S.C. (AJ&K) 38] and **Abdul Hamid v. Muhammad Zameer** [1990 P.S.C. 1014]. These judgments support Mr. Qureshi's contention.
>
> 14. This point was not raised before the High Court and has not been raised in concise statement filed in this Court, but once it has been brought to our notice the question is whether we should pass an order behind the back of a Government functionary without hearing him. I am quite clear in my mind the answer to this question has to be in the negative. If a necessary party is absent there can be no adjudication.

> The situation in the aforementioned case was also the same and in fact this point was noticed by the Court itself. Therefore, the writ petition filed by Mirza Lal Hussain can be dismissed on this score alone."

Thus, the writ petition was not maintainable without arraying the Board of Directors as party in the line of the respondents.

9. The High Court has dismissed the writ petition on the ground that alternate remedy is available to the petitioner, appellant, herein by resorting to the Court of law established under the Companies Ordinance, 1984. Since, we have drawn the conclusion that the writ petition was filed by an unauthorized person and it was also not maintainable without arraying the Board of Directors as party in the line of the respondents, therefore, there is no need to record findings on the question that alternate remedy under the Companies Ordinance was available and

whether the writ petition was maintainable or not.

The result of the above discussion is that the appeal in this Court and the writ petition in the High Court were filed by an unauthorized person, resultantly the appeal is dismissed with no order as to costs.

CHIEF JUSTICE JUDGE JUDGE

Muzaffarabad.
__.02.2017.

Date of announcement: 22.02.2017