

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, C.J.
Kh. Muhammad Naseem, J.
Raza Ali Khan, J.
Muhammad Younas Tahir, J.

Civil appeal No.161 of 2022
(PLA filed on 31.10.2022)

1. Azad Government of the State of Jammu and Kashmir through Chief Secretary, office situate at New Secretariat, Muzaffarabad.
2. Secretary Service and General Administration Department Azad Government of the State of Jammu and Kashmir, office situate at New Secretariat, Muzaffarabad.

....APPELLANTS

VERSUS

1. Rashid Afraz son of Muhammad Afraz Khan, Caste Sudhan, r/o Dehra Kharick, Tehsil Rawalakot.

....RESPONDENT

2. Sardar Amir Jameel, Chairman Pearl Development Authority Rawalakot.
3. Accountant General of Azad Jammu and Kashmir, having his office at Sathra Hills, Muzaffarabad.

....PROFORMA RESPONDENTS

(On appeal from the judgment of the
High Court dated 05.09.2022 in writ
petition No.264 of 2022)

FOR THE APPELLANTS: Miss Shehnaz
Gillani, Legal
Advisor.

FOR THE RESPONDENT: Ch. Amjid Ali,
Advocate.

Civil appeal No.162 of 2022
(PLA filed on 03.11.2022)

Sadaqat Hussain Shah son of Ghulam Nabi
Shah, r/o Mohallah Ward No.02, Shahkot,
Tehsil Authmuqam, District Neelum Valley,
Chairman Neelum Valley Development Board.

....APPELLANT

VERSUS

1. Rashid Afraz son of Muhammad Afraz Khan, Caste Sudhan, r/o Dehra Kharick, Tehsil Rawalakot.

....RESPONDENT

2. Azad Government of the State of Jammu and Kashmir through Secretary Services and General Administration Department having his office at New Secretariat, Muzaffarabad.
3. Services and General Administration Department through Secretary Services and General Administration Department having his office at New Secretariat, Muzaffarabad.
4. Sardar Amir Jameel, Chairman Pearl Development Authority Rawalakot.

....PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 05.09.2022 in writ petition No.264 of 2022)

FOR THE APPELLANT: Raja Sajjad Ahmed Khan, Advocate.

FOR THE RESPONDENT: Ch. Amjid Ali, Advocate.

Civil appeal No.163 of 2022

(PLA filed on 04.10.2022)

Sardar Amir Jameel, Chairman Pearl
Development Authority, Rawalakot.

....APPELLANT

VERSUS

1. Rashid Afraz son of Muhammad Afraz
Khan, Caste Sudhan, r/o Dehra Kharick,
Tehsil Rawalakot.

....RESPONDENT

2. Azad Government of the State of Jammu
and Kashmir through its Chief Secretary,
having his office at New Secretariat,
Muzaffarabad.
3. Secretary Services and General
Administration Department having his
office at New Secretariat, Muzaffarabad.
4. Accountant General of Azad Jammu and
Kashmir, Muzaffarabad.

....PROFORMA RESPONDENTS

(On appeal from the judgment of the
High Court dated 05.09.2022 in writ
petition No.264 of 2022)

FOR THE APPELLANT: Barrister Hamayun
Nawaz Khan,
Advocate.

FOR THE RESPONDENT: Ch. Amjid Ali,
Advocate.

Civil appeal No.164 of 2022
(PLA file on 01.11.2022)

Ch. Muhammad Mehboob, Chairman Kotli
Development Authority.

....APPELLANT

VERSUS

1. Rashid Afraz son of Muhammad Afraz
Khan, Caste Sudhan, r/o Dehra Kharick,
Tehsil Rawalakot.

....RESPONDENT

2. Azad Government of the State of Jammu
and Kashmir through its Chief Secretary,
having his office at New Secretariat,
Muzaffarabad.
3. Secretary Services and General
Administration Department having his
office at New Secretariat, Muzaffarabad.

4. Accountant General of Azad Jammu and Kashmir, Muzaffarabad.

....PROFORMA RESPONDENTS

(On appeal from the judgment of the
High Court dated 05.09.2022 in writ
petition No.264 of 2022)

FOR THE APPELLANT: Raja Sajjad Ahmed
Khan, Advocate.

FOR THE RESPONDENT: Ch. Amjid Ali,
Advocate.

Civil appeal No.165 of 2022
(PLA file on 23.11.2022)

Syed Azhar Ali Gillani, Chairman Development
Authority Muzaffarabad.

....APPELLANT

VERSUS

1. Rashid Afraz son of Muhammad Afraz
Khan, Caste Sudhan, r/o Dehra Kharick,
Tehsil Rawalakot.

....RESPONDENT

2. Azad Government of the State of Jammu
and Kashmir through its Chief Secretary,

having his office at New Secretariat,
Muzaffarabad.

3. Secretary Services and General
Administration Department having his
office at New Secretariat, Muzaffarabad.
4. Accountant General of Azad Jammu and
Kashmir, Muzaffarabad.

....PROFORMA RESPONDENTS

(On appeal from the judgment of the
High Court dated 05.09.2022 in writ
petition No.264 of 2022)

FOR THE APPELLANT: Raja Sajjad Ahmed
Khan, Advocate.

FOR THE RESPONDENT: Ch. Amjid Ali,
Advocate.

Civil appeal No.166 of 2022
(PLA file on 23.11.2022)

Imran Khalid Director General Mirpur
Development Authority, Mirpur.

....APPELLANT

VERSUS

1. Rashid Afraz son of Muhammad Afraz Khan, Caste Sudhan, r/o Dehra Kharick, Tehsil Rawalakot.

....RESPONDENT

2. Azad Government of the State of Jammu and Kashmir through its Chief Secretary, having his office at New Secretariat, Muzaffarabad.
3. Secretary Services and General Administration Department having his office at New Secretariat, Muzaffarabad.
4. Accountant General of Azad Jammu and Kashmir, Muzaffarabad.

....PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 05.09.2022 in writ petition No.264 of 2022)

FOR THE APPELLANT: Raja Sajjad Ahmed Khan, Advocate.

FOR THE RESPONDENT: Ch. Amjid Ali, Advocate.

Date of hearing: 08.12.2022

JUDGMENT:

Raja Saeed Akram Khan, C.J.- The respondent, herein, challenged the

appointment notification of Sardar Amir Jameel as the Chairman Pearl Development Authority, Rawalakot, dated 16.08.2022, by filing a writ petition No.264 of 2022, before the High Court. During the course of proceedings in the writ petition, vide notification dated 01.09.2022, the impugned appointment notification was cancelled by the Government. The learned High Court through the impugned judgment dated 05.09.2022, disposed of the writ petition with a direction to the concerned authorities to frame the rules for the posts of Chairman and Director General of the Development Authorities in the light of the guidelines given by the apex Court of Pakistan in the case reported as *Khawaja Muhammad Asif v. Federation of Pakistan and others* [2013 SCMR 1205], within a period of two months otherwise, all the said posts would become vacant. The said judgment of the High

Court has been called in question through the instant appeals by leave of the Court.

2. Barrister Hamayun Nawaz Khan, Raja Sajjad Ahmed Khan, Advocates and Miss Shehnaz Gillani, Legal Advisor of the Services and General Administration Department submitted that the impugned judgment is against law and the facts of the case. They contended that the notification which was challenged in the writ petition was cancelled by the Government during the pendency of writ petition; therefore, the writ petition had become infructuous and proper course was to consign to record the same on this sole ground, but the learned High Court disposed of the same while recording uncalled-for findings. They added that the learned High Court itself has formulated the rules in the impugned judgment and thereafter, issued a direction for framing the rules accordingly. In this way, by exercising

the powers of the Government the learned High Court has acted beyond its Constitutional jurisdiction. They added that the learned High Court could show the desire for framing the rules in a particular manner but could not exercise the powers of Government itself. On a Court's query the learned counsel for the appellant, Amir Jameel, submitted that the appointment of his client has been made after properly formulating the rules in accordance with law, whereas, Raja Sajjad Ahmed, Khan, Advocate, the learned counsel for the other appellants admitted the position that presently there are no rules for appointment against the posts of Chairman Development Authorities except the post of Director General Mirpur Development Authority and Chairman Pearl Development Authority.

3. On the contrary, the version of the learned counsel for the respondent was that the

impugned judgment is in accordance with law. He submitted that the learned High Court has not given the direction for formulating the rules in a specific manner rather only a desire has been shown in this regard. In support of this version, he drew the attention of the Court towards the findings recorded by the High Court in the impugned judgment. He further stated that the appointments of the heads of the Development Authorities are being made in violation of law just on the basis of political affiliation and after coming on surface this fact the learned High Court was fully justified to issue the direction for proper legislation, therefore, it cannot be said that the learned High Court has issued any unnecessary direction. He also drew the attention of the Court towards the judgment of this Court reported as *Muhammad Azeem Dutt and others v. Raja Khadim Hussain and others* [2017 SCR

577] and submitted that the purpose of establishing the Development Authorities as well as the goals which should be achieved by the Authorities, has been discussed in the referred report, but the guidelines given by this Court are being violated. He forcefully submitted that writ was disposed of with the direction to formulate the uniform rules for the post of Chairman and Director General of the Development Authorities, but the Government formulated the rules for one of the Development Authorities, i.e. Pearl Development Authority, in a colourful manner and prior to the publication of the rules in the official gazette on the same day the Government appointed the person of choice which is against the principles of law settled by this Court. He also raised an objection on the maintainability of the appeal filed by the Government by leave of the Court while

submitting that the same should have been filed by the Advocate-General not the Legal Advisor of the Services and General Administration Department. He further submitted that the rules framed by the Government for the post of Chairman of one of the Development Authorities as well as the appointment made in the light of the said rules have already been challenged before the High Court.

4. We have heard the arguments advanced at bar and examined the record with due care and caution. The main contention of the learned counsel for the appellants was that during the pendency of writ petition before the High Court, the notification, which was impugned in the writ petition, was cancelled, therefore, the learned High Court should have consigned to record the writ petition without recording any findings. In our view this version of the appellants is not convincing in nature as

when a clear violation of law is obvious from the record, in any case, the Courts cannot shut the eyes or remain mum like a silent spectator over transgressions in guise of such actions rather are to remain vigilant about the rights of the people and in order to prevent the authorities from doing wrong. However, to ascertain, whether in the matter in hand when the impugned notification was cancelled and the writ petition had become infructuous the learned High Court was justified to dispose of the same with some directions or not, we deem it proper to go into the real controversy involved in the case. The record shows that initially through a writ petition the appointment of the Chairman Pearl Development Authority was challenged on the ground that according to the relevant rules of the Pearl Development Authority only an officer of BPS-19, could be appointed on deputation against the post of

Chairman, therefore, the appointment made through direct recruitment on the political basis is violative to the rules. The record speaks that during the pendency of writ petition the incumbent holding the post of the Chairman tendered his resignation, whereupon, the writ petition was consigned to record by the High Court. Thereafter, another appointment was made on the same manner and when the said appointment was challenged by filing writ petition the Government cancelled the appointment notification and a request was made before the High Court for consigning the writ petition to record. This conduct itself shows that just to avoid the judgment of the High Court and its consequent effects upon and to defeat the substantive cause of the respondent, practice of tendering of the resignation and cancellation of notification has been adopted. Recently, in a full Court judgment delivered in

the case titled *D.I.G. Police and others v. Tahir Ayub* (civil appeal No.18 of 2022, decided on 28.07.2022), this Court disapproved the practice of withdrawal of appeal by the Government against the public interest while observing that in view of the provisions of Rule 30 of the Law Department Manual, 2016, for withdrawal of a case from the Court there are three requirements i.e., (i) public interest; (ii) consultation with the concerned department; and (iii) prior approval of the Government. In the instant matter although, the situation is slightly different as the petitioner before the High Court did not file application for withdrawal of writ petition rather the Government adopted the course of similar nature against the public interest to defeat the writ petitions, in first one by tendering resignation of the Chairman and in second one by cancelling the subsequent notification of appointment of the Chairman

Pearl Development Authority, therefore, in our view to meet this situation instead of consigning to record the writ petition the disposal of the same with appropriate findings was in the public interest and good governance. So, in order to remove the anomaly, in respect of the appointments against the posts of heads of the Development Authorities the learned High Court issued the direction for framing of rules. Here we would like to observe that the Development Authorities have been established in the territory of Azad Jammu and Kashmir for making all arrangements to plan, regulate, control and facilitate urban development for creating and provision of housing and all civic amenities ranging from footpaths, safe water, sewerage system, roads, commercial area, markets, sanitation, waste disposal, health facilities, play grounds, schools to urban transportation, clean environment etc., not

mere making schemes and allotments of the plots as is the usual practise of Development Authorities in AJK. In view of the relevant statutes, it is the duty of the Development Authorities to develop the areas of the relevant town and transfer the same to the concerned Municipal Corporation in the terms agreed between the Development Authority and the concerned Municipal Corporations, but not a single example in the whole territory of Azad Jammu and Kashmir except Mirpur in 1985, is available to evidence the completion of housing schemes as promised and planned and transferred to local government bodies. Nowadays, the Development Authorities have become burden on the public exchequer. In a large number of cases before this Court a fact is repeatedly established that the Development Authorities are only selling the lands in shape of plots and spend the amount collected through

this process on payment of salaries, moreover, the citizens are also being victimized by playing fraud in the allotments of the plots. The situation has become alarming, and it is high time to wake up and revive the Development Authorities through object-oriented rules and taking the solid steps by the concerned authorities. This Court in the case reported as *Muhammad Azeem Dutt and others v. Raja Khadim Hussain and others* [2017 SCR 577], has discussed the objects and malfunctioning of the Development Authorities and has also given some guidelines in the following manners:-

"مندرجہ بالا خصوصی قانون کے علاوہ آزاد جموں و کشمیر میں شہری سہولیات کے حوالے سے آزاد جموں و کشمیر لوکل گورنمنٹ ایکٹ ۱۹۹۰ بھی نافذ العمل ہے جس کے شیڈول V میں لوکل کونسل کے علاوہ بلدیہ کی لازمی ذمہ داریوں کا تذکرہ کیا گیا ہے جن میں صفائی، صحت عامہ، تعلیمی ادارے، ٹائون پلاننگ بشمول ماسٹر پلان کی ترتیب، گلیوں میں پانی کی نکاسی، کھلی جگہوں کی فراہمی، عوام الناس کے مفاد اور خدمات کے لیے اراضی کا مختص کیا جانا، شاہراہ عام اور گلیوں کی فراہمی، ناجائز تجاوزات کو روکنا، عوامی منڈیوں، عوامی تفریح کے لیے باغات، لائبریریوں، فلاحی اداروں، فلاحی گھروں، قبرستان اور شمشان گھاٹ کا قیام جیسے تقریباً ۷۲ قسم کے معاملات شامل ہیں۔ جہاں تک عمارتوں

کی تعمیر اور نقشہ جات کی منظوری کا تعلق ہے تو شمار یہ ۲۶ میں اس نسبت خصوصی طریقہ کار وضع کیا گیا ہے اور بلدیہ کا نقشہ منظور نہ کرنے پر حق اپیل روبرو حکومت فراہم کیا گیا ہے۔ اس طرح قوانین نافذ الوقت کے تحت بلدیہ حدود میں آباد شہریوں کا یہ حق ہے کہ انہیں تمام تر بنیادی شہری ضرورتیں فراہم کی جائیں اور اس مقصد کے لیے منصوبہ بندی کی جا کر اُس پر عملدرآمد کو یقینی بنایا جائے۔ ترقیاتی اور بلدیاتی اداروں کا قیام انہی مقاصد کو مد نظر رکھتے ہوئے عمل میں لایا گیا ہے تاکہ غیر منظم اور بے ڈھنگے طریقے سے کی گئی تعمیرات کو روکا جائے اور شہری ضرورتوں سے محروم بستیوں اور آبادیوں کو انسانی معاشرت اور تمدن کے مطابق آباد اور منظم کیا جاسکے۔ اگر قوانین کی روح اور انسانی زندگی کے تمدنی تقاضوں کو مد نظر رکھا جائے تو اس میں کوئی دوسری رائے نہ ہے کہ اجتماعی انسانی آبادی میں پارکوں، سڑکوں، گلیوں، قبرستانوں اور دیگر مذہبی تقاضوں کے مطابق عبادت گاہوں کے لیے جگہ کا مختص کیا جانا اور منصوبہ بندی کرنا لازمی ہے۔ اس حوالہ سے آزاد کشمیر میں عموماً اور میرپور میں خصوصاً ہر خاص و عام، اداروں کی جانب سے ماسٹر پلان کی خلاف ورزی اور اجتماعی شہری حقوق کی پامالی سے متاثر اور رنجیدہ نظر آتا ہے۔ عدالتی ریکارڈ پر یہ بات بھی موجود ہے کہ کئی ایک مقدمات میں سڑکوں اور گلیوں کے لیے مختص جگہوں پر اداروں نے انتہائی غفلت سے خلاف قانون رہائشی پلاٹس کی تخلیق کی ہوئی ہے۔ اسی طرح نالوں، پارکوں اور دیگر تمدنی ضرورتوں کے لیے مختص جگہوں کو بھی انفرادی مفادات کے پیش نظر رہائشی پلاٹس میں تبدیل کر دیا گیا جس سے نہ صرف قانونی مالکان اور رہائشی باشندوں کے حقوق بُری طرح متاثر ہوئے بلکہ صحت، صفائی، ماحول، ٹریفک وغیرہ جیسے سنگین مسائل نے بھی جنم لیا جس سے لوگوں کی زندگی اجیرن ہو چکی ہے۔ یہ تمام صورتحال متعلقہ اداروں کی اپنے فرائض کی ادائیگی میں کوتاہی اور ناجائز اختیارات کے استعمال کا شاخسانہ ہے۔ مفاد عامہ کے لیے مختص جگہوں کی ہیئت تبدیل کرنے یا دیگر اغراض کے لیے استعمال والاٹ کرنے کا عمل نہ صرف قانون کے مغائر ہے بلکہ عدالت ہذا نے ہمیشہ مفاد عامہ کے لیے مختص جگہوں

کو اُسی مقصد کے لیے استعمال کرنے کو لازمی قرار دیا جس مقصد کے لیے وہ
مختص کی گئیں۔"

It is very unfortunate that neither the purpose of establishing the Development Authorities, mentioned in the relevant statute, has been adhered to nor due weight has been given to the guidelines given by this Court. Astonishingly, for the appointment against the post of Chairmans of the Development Authorities no qualification has been prescribed. We concur with the view of the learned High Court that no one should be appointed as Chairman or Director General of the Development Authorities without professional qualification for planning, development and construction of towns, in order to meet the basic purpose of establishment of the Development Authorities. It is very amazing that during the course of arguments in response to a query made by the Court the learned counsel for the appellants

submitted that presently there are no rules for the appointment of the heads of the Development Authorities in Azad Jammu and Kashmir except Mirpur Development Authority and Pearl Development Authority, whereas, this Court in a number of cases has held that no appointment can be made against a post without framing the rules. For instance, reference may be made to a case reported as *Kamran Hafeez v. Azad Government and 4 others* [2014 SCR 676], wherein while dealing with the proposition it has been held that:-

“11. So far as the question of placing this post in common pool cadre strength is concerned, it makes no difference as according to notification dated 19.12.2003, for appointment against the post of common pool cadre strength, B-20, the civil servant of the concerned department in the relevant cadre i.e. officer B-19 according to rules and seniority is also to be considered.

Thus, once again this situation demands that after framing of rules, eligible office of the department in grade, B-19 be considered for appointment. Therefore, unless there are specific rules for the post of Director General, B-20 containing the cadre, qualification and other requirements, all the other process for appointment becomes irrelevant. Our this view finds support from the principle of law enunciated in the case reported as *Syed Sajid Hussain vs. Ch. Muhammad Latif and others*, [1992 SCR 468], whereby the appointments without rules were declared as illegal and it was held that for appointment by promotion against a post, framing of rules prescribing the mode is necessary."

We with heavy-heart mention here that in very audacious manner the law has been violated by the executive authorities and in such a situation the High Court was fully justified to issue the direction for framing the rules. So, the

argument of the learned counsel for the appellants that the findings recorded by the High Court in the impugned judgment are unnecessary having no substance is hereby repelled.

6. The other contention of the learned counsel for the appellants that the learned High Court itself formulated the rules and thereafter sent the matter to the concerned forum for making rules accordingly, is also not supported by the record as in the impugned judgment the learned High Court has only shown the desire/guidelines to formulate the rules keeping in mind the guidelines given by the apex Court of Pakistan in a case reported as *Khawaja Muhammad Asif v. Federation of Pakistan and others* [2013 SCMR 1205]. During the course of arguments in response to a query made by the Court the learned counsel for the appellants stated that the Courts can show the desire for

formulating the rules in a specific manner and in the impugned judgment the learned High Court did the same not otherwise. Keeping in view the worse situation emerged in the appointments of the heads of the Development Authorities, discussed in the preceding paragraph, we would like to further strengthen the findings of the learned High Court while observing that the heads of the Development Authorities should have qualification and experience in the relevant field and should not be appointed on the basis of political affiliation rather the posts should be filled in by deputation of the officers of BPS-20, for the main Development Authorities, i.e. Muzaffarabad Development Authority and Mirpur Development Authority and for the remaining Development Authority the officer of BPS-19, for a specific period of at least three years. Raja Sajjad Ahmed Khan, Advocate, has

produced a copy of the Mirpur Development Authority Establishment Service Rules, 1988, wherein, for the post of Director General the mode of appointment by deputation of a suitable officer from Government Department already working in BPS-19 and above and by direct recruitment, has been provided, but to judge the suitability no process has been specified, moreover, for direct recruitment eligibility criteria has not been provided, which creates ambiguity and open the door for making appointments in a colourful manner which is against the spirit of law. As admittedly presently no qualification has been specified for the heads of Development Authorities and no method has been provided for judging their suitability by any proper board or committee and even no rules are available for the post of Chairman of most of the Development Authorities, therefore, in this state of affairs, no other option left with

the Court except to declare all the appointments of the heads of the Development Authorities illegal. They shall be ceased to hold the offices immediately. The Secretary Law is directed to place the matter before the concerned forum for making object-oriented rules for all the posts of heads of the Development Authorities within a period of three months and till the proper rules are framed the Government shall assign the charge of the Mirpur Development Authority and Development Authority Muzaffarabad to the Chief Engineers P.P.H./Highways and the charge of other Development Authorities to the Superintending Engineers P.P.H./Highways for smooth functioning of the Development Authorities. It is pertinent to mention here that for all the posts of heads of Development Authorities the objective criteria should be uniform.

In view of the above, all the titled appeals having no substance are hereby dismissed with the directions/observations mentioned in the preceding paragraphs. No order as to costs.

CHIEF JUSTICE

JUDGE

JUDGE

JUDGE

Muzaffarabad,
15.12.2022