

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Yahya Afridi

Civil Petition No. 4296/2019

(On appeal against the order dated 01.10.2019
passed by the Lahore High Court, Lahore, in
C. O. No. 31/2015)

Mrs. Naila Naeem Younus, etc. ... *Petitioners*

Versus

*M/s Indus Services Limited through its
Chief Executive, etc.* ... *Respondents*

For the Petitioners: Barrister Khurram Raza, ASC
Ch. Akhtar Ali, AOR
a/w petitioner No. 3

For the Respondent Nos. 1-3: Mr. Muhammad Khalid Ch., ASC

For Respondent No. 4: Barrister Minal Tariq,
Assistant Director Litigation, SECP

Date of Hearing: 28.04.2022

ORDER

Qazi Faez Isa, J. This petition challenges order dated 1 October 2019, passed by the learned Company Judge of the Lahore High Court, Lahore whereby the petitioners' application for correction of the register of members of Indus Services (Pvt) Limited, bearing Registration Number 1961-1962/0001328, (**'the Company'**) was dismissed.

2. The petitioners had invoked the company jurisdiction of the High Court under section 152 of the Companies Ordinance, 1984¹ (**'the Ordinance'**) and contended that petitioner 1 (Naila Naeem Younus) held 2,050 shares in the Company, petitioner 2 (Muhammad Nadeem Younus) held 4,050 shares in the Company and petitioner 3 (Nadia Younus) held 2,050 shares in the Company; their total shareholding in the Company

¹ Published in the Gazette of Pakistan, Extraordinary, Part I, dated 8 October 1984, pages 195 to 571.

was 8,150 shares (**'the said shares'** or **'the said shareholding'**), out of a total of 48,832 shares of one hundred rupees each issued by the Company. The shareholding of the petitioners was reflected in the records of the Company and in the Annual Returns of the Company (Form-A) till dated 31 October 2005, which were filed with respondent 4, the Securities and Exchange Commission of Pakistan (**'the SECP'**). However, in the Annual Returns (Form-As) subsequently filed with the SECP their names were removed from the register of members, and it was shown that petitioner 1 had transferred her 2,050 shares to respondent 3 (Muhammad Naeem Younus) on 1 May 2006, petitioner 2 had transferred his 4,050 shares to respondent 3 on 31 October 2006 and petitioner 3 had transferred her 2,050 shares to respondent 3 on 31 October 2006.

3. The petitioners denied having transferred the said shares to respondent 3, and alleged that their said shares were fraudulently transferred or omitted without sufficient cause and that their names were also fraudulently removed or omitted without sufficient cause from the register of members of the Company. Therefore, on 24 August 2015, they filed an application under section 152 of the Ordinance for rectification of the Company's register (**'the application'**). The application was dismissed by the learned Company Judge on the ground that it had been belatedly filed; beyond a period of three years as prescribed under Article 181 of the First Schedule to the Limitation Act, 1908 (**'the Limitation Act'**), and in applying this provision reliance was placed on a judgment delivered by the same learned High Court Judge² in the case of *United Foam Industries (Pvt.) Ltd. v Joy Foam (Pvt.) Ltd.*³ and on a judgment of the Supreme Court in the case of *M. Imam-ud-Din Janjua v Thal Development Authority*.⁴

4. Mr. Khurram Raza, learned counsel representing the petitioners, was heard, his contentions were recorded (in orders dated 21 January 2020 and 17 February 2022) and notices were issued to the respondents. The learned Mr. Muhammad Khalid Chaudhry entered appearance on behalf of respondents 1, 2 and 3 (**'the contesting respondents'**). The

² Shahid Karim, J.

³ 2016 CLD 2325, also reported in 2016 PCTLR 807.

⁴ PLD 2012 Supreme Court 123, a decision authored by Hamoodur Rahman, CJ, the other member of the two-member Bench was Sajjad Ahmad, J.

SECP was represented by its Assistant Director (Litigation), Ms. Minal Tariq. The order dated 17 February 2022 had also directed the Company and respondent 3 (the purported transferee of the said shares), *'to file concise statement regarding the transfer of the said shares and if either of them have in its/his possession the transfer deeds to file photocopies thereof and bring the originals on the next date of hearing.'* Concise statement (CMA No. 2522/2022) was filed by respondents 1 and 3 wherein it was admitted that the petitioners held the said shares, and that these were not transferred pursuant to an instrument of transfer (transfer deeds).⁵ Instead, it was alleged that the said shares were transferred because fifty thousand pounds sterling was paid into a London bank account by respondent 3 on the request of petitioner 2, which amount was *'never given back'*. Therefore, the said amount was adjusted, *'in lieu of their share holding in the Company.'* Reference was also made to an annual general meeting of the Company held on 25 April 2006 in which the said shares were, *'forfeited by the Company and are distributed through a resolution and approval by the Directors.'*

5. The learned Mr. Khurram Raza, representing the petitioners, submits that the questions which require determination are: (a) whether rectification of the Company's register could be sought after three years, and (b) whether the purported transfer of the said shares was legal. Attending to the first question the learned counsel submits that the Ordinance did not prescribe any particular period within which rectification of a company's register of members could be sought. The Ordinance was repealed and substituted by the Companies Act, 2017,⁶ which also does not prescribe any period within which such an application can be submitted. The learned counsel also relies upon the decision in the case of *Naeem Finance Ltd. v Bashir Ahmad Rafiqui*⁷ wherein, with regard to an application under the Insurance Act, 1938, it was held that such an application need not be filed within three years as Article 181 of the First Schedule of the Limitation Act was not applicable, and that the same

⁵ As prescribed by section 76 of the Companies Ordinance, 1984.

⁶ Section 509 of the Companies Act, 2017, published in the Gazette of Pakistan, Extraordinary, Part I, dated 31 May 2017, pages 181 to 618.

⁷ PLD 1971 Supreme Court 8, a decision of Wahiduddin Ahmad, of a three-member Bench of which the other members were Hamoodur Rahman, CJ, and M. R. Khan, J.

rationale for decision (*ratio decidendi*) is equally applicable to an application under the Ordinance. He further submits that the judgment of the Supreme Court in the case of *M. Imam-ud-Din Janjua* (relied upon in the impugned order) does not contradict the court's earlier decision in the case of *Naeem Finance Ltd*; the subsequent decision in *M. Imam-ud-Din Janjua* was in a case under the Arbitration Act, 1940, which attracted the Limitation Act, and was also specifically attended to in Articles 158 and 178 thereof. However, none of the 29 sections of the Limitation Act, nor any of the articles of its First Schedule, mention applications for rectification of the register of members of companies. Therefore, these two decisions of the Supreme Court are reconcilable, submits learned counsel. However, if it be assumed that they are at variance, then the decision of the larger bench, in the case of *Naeem Finance Ltd.*, will prevail.

6. With regard to the second question (b), the learned counsel submits that the contesting respondents admit the petitioners' ownership of the said shares. Therefore, the burden to establish that the same were legally transferred lay upon them, and in particular on respondent 3 to whom the same were transferred, but the legal transfer of the said shares was not established. He further states that, admittedly the said shares were not transferred through an instrument/s of transfer (transfer deed/s), as prescribed by section 76 of the Ordinance. Therefore, the petitioners cannot be deprived of the said shares, and the same should be restored to them by reinserting their names and the said shares against their respective names in the Company's register.

7. The SECP was asked to submit its concise statement which it did (CMA No. 2678/2022). The Assistant Director (Litigation) of SECP was asked whether the manner in which the said shares were transferred from the petitioners to the respondent 3 accorded with the law and she stated that it did not, and added that what was done was in contravention of section 76 of the Ordinance. As regards the contention (of the contesting respondents) that the said shares were forfeited, the Assistant Director states that such a concept is alien to company law. With regard to question (a), whether Article 181 of the First Schedule to the Limitation Act is applicable to an application submitted for rectification of a

company's register, the Assistant Director stated that it was not by referring to section 152 of the Ordinance, which did not mention any particular period within which an application to rectify the company's register could be submitted. She reinforced her contention by referring to section 153 of the Ordinance which stipulates that fraudulent or illegal entries or omissions made in the said register constitute a criminal offence, and with regard to the prosecution/punishment of a crime there is no limitation period. Reference was also made to the Securities and Exchange Commission of Pakistan Act, 1997⁸ and its Part X, titled *Cognizance and Prosecution of Offences*, where under cognizance of offences can be taken by the SECP, which the Assistant Director said is usually done after the register rectification dispute has been adjudicated and determined by a Company Judge, and that the said provision also does not prescribe any time period within which criminal action can be initiated. Ms. Tariq drew attention to a new provision added to the Companies Act, 2017, that is section 126(4), which has empowered the Court rectifying the register to '*send a reference for adjudication for such offence*', and adds, that here too no period within which criminal action can be initiated is prescribed. In conclusion Ms. Tariq, SECP's Assistant Director, stated that a company's register not only records the names of the members but also their shareholding, and that the register of members and debenture-holders is an important record of rights and must not be tampered with. In response to our further queries SECP filed concise statements (CMAs No. 2733 and 2734 of 2022).

8. The learned Mr. Muhammad Khalid Chaudhry submits that the impugned order is well reasoned and had correctly applied Article 181 of the First Schedule to the Limitation Act, and the said precedents of the High Court and Supreme Court. He states that the rationale of the decision in the case of *M. Imam-ud-Din Janjua* cannot be restricted to arbitration disputes or matters which arise out of the Arbitration Act, 1940. He further states that since the decision in the case of *M. Imam-ud-Din Janjua* is later in time it will prevail over the decision in the case of *Naeem Finance Ltd.* The learned counsel also placed reliance upon the

⁸ Published in the Gazette of Pakistan, Extraordinary, Part I, dated 26 December 1997, pages 1749 to 1780.

concise statement (CMA 2522/2022) filed on behalf of respondents 1 and 3, and reiterated the contentions mentioned therein.

9. We have heard the learned counsel for the contesting parties and the representative of the SECP. The contesting respondents do not dispute that the petitioners had held the said shares in the Company but state that they were transferred, or forfeited, in favour of respondent 3. The contentions/pleadings of the contesting respondents are that on account of the deposit of fifty thousand pounds in some account (without disclosure of name of account-holder and proof of such deposit), done to enable petitioner 2 to get a promotion in his Bank job, but without supporting such assertion with any proof, did not justify the transfer of the petitioners' property (the said shares) to respondent 3. Nor is the said transfer justified on the equally vague, and lacking in material particulars, of the purported *forfeiture* of the said shares, and subsequent transfer to the name of respondent 3. The contesting respondents had utterly failed to support, let alone establish, that the purported transfer, or forfeiture, was in accordance with law. They have also not produced a single instrument of transfer with regard to the transfer of the said shares. The contesting respondents primarily relied on the purported belated filing of the application, which had sought the rectification of the register of members, and contend that such an application has to be filed within three years in terms of Article 181 of the First Schedule of the Limitation Act.

10. Before considering the impugned order it would be appropriate to examine what constitutes the register of members and debenture-holders and its significance. Sections 147 to 156 of the Ordinance⁹ attend to the *Register of Members and Debenture-Holders*. The law requires every company to keep a *register of its members and debenture-holders*¹⁰ and to keep this register at the registered office of the company and to make it available for inspection.¹¹ Every company is also required to file every year 'a return containing the particulars specified in Form A of the Third

⁹ Sections 118 to 130 of the Companies Act, 2017.

¹⁰ Section 147 of the Companies Ordinance, 1984; section 119 of the Companies Act, 2017.

¹¹ Section 148 of the Companies Ordinance, 1984; section 121 of the Companies Act, 2017.

Schedule,¹² which includes a *list of members* of the company and to show the number of shares held by each member. Therefore, the register is not just a register of members but also a register of the shareholding of each member. The register of members lists the owners of a company and records their proprietary rights, that is, their shareholding of the company. Consequently, the integrity of the register of members is of utmost importance and must be maintained. If the *'name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members'*¹³ the register needs to be rectified.

11. The only mention of a *company* in the Limitation Act is in the *Explanation* to section 3, which mentions *'a company which is being wound up by the Court'* and the only article in the First Schedule of the Limitation Act, which mentions a company, is article 112, *'For a call by a company registered under any Statute or Act'* and which prescribes a limitation period of three years. And, in the Ordinance the only mention of the Limitation Act is in section 425, which states that, *'Notwithstanding anything contained in the Limitation Act, 1908 (IX of 1908), in computing the time within which a liquidator may file a suit for the recovery of any debt due to the company, the period which elapses between the making of the petition for liquidation and the assumption of charge by the liquidator, or a period of one year, whichever be greater, shall be excluded.'*¹⁴ Neither the Limitation Act nor the Ordinance mentions an application for the rectification of the company's register of members or debenture-holders nor prescribes a particular period within which such an application is to be filed. Article 181 of the First Schedule to the Limitation Act is in respect of, *'Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908 (V of 1908)'*, and for such applications prescribes a three years period. Therefore, the question to be considered is whether Article 181 also applies to an application for the rectification of the register of a company.

¹² Section 156 of the Companies Ordinance, 1984; First Schedule, Part I, regulation 50 of the Companies Act, 2017.

¹³ Section 152(1)(a) of the Companies Ordinance, 1984; section 126(1)(a) of the Companies Act, 2017.

¹⁴ Section 410 of the Companies Act, 2017.

12. The Ordinance (substituted by the Companies Act, 2017) is a self-contained law and attends to all matters pertaining to companies, including the maintenance of the register of members and debenture-holders and provides the mechanism to rectify if a fraud is committed or omission made therein. The Ordinance does not prescribe any period within which an application for rectification may be submitted. Therefore, it would not be appropriate to do so on account of a tenuous connection with Article 181 of the Limitation Act. Section 152¹⁵ of the Ordinance does not distinguish between rectification necessitated on account of a fraud having been committed and rectification required to correct an omission in the register of members. Fraudulent changes made to the register and omissions therefrom are both categorized as offences.¹⁶ There is no limitation period in Pakistan to prosecute and punish a crime; unlike some countries where there are *statutes of criminal limitations*. A fraudster, who had illegally transferred shares of another into his own name commits a crime and could be convicted for this offence. However, if the impugned order is upheld, the one defrauded could not get back his/her shares, if the application to rectify the company's register was filed after a period of three years. But this irreconcilable contradiction does not arise if Article 181 is held not to apply to an application to rectify the company's register. SECP is quite correct to state that when section 152 of the Ordinance is read with the section following it (section 153) it removes all doubts, if there were any, that the legislative intent was not to prescribe a period of limitation in filing a rectification application, or to make it subject to Article 181, or to any other provision of the Limitation Act.

13. The abovementioned two judgments of the Supreme Court, respectively relied upon by the opposing counsel, do not specifically attend to the matter of a rectification application filed under the company law. The decision in the case of *M. Imam-ud-Din Janjua* was relied upon by the learned single Judge,¹⁷ therefore, it would be appropriate to attend to it first, and then to the decision in the case of *Naeem Finance Ltd*. The *M.*

¹⁵ Section 152 of the Companies Ordinance, 1984; section 126 of the Companies Act, 2017.

¹⁶ Section 153 of the Companies Ordinance, 1984; section 127 of the Companies Act, 2017.

¹⁷ Shahid Karim, J, who also relied on his own decision in the case of *United Foam Industries (Pvt) Ltd v Joy Foam (Pvt) Ltd* (2016 CLD 2325).

Imam-ud-Din Janjua case pertained to a dispute arising out of two contracts between the Thal Development Authority and its contractor, namely, M. Imam-ud-Din Janjua. The contractor had submitted an application under section 20 of the Arbitration Act, 1940, which was contested. The Supreme Court noted that, '*The first question, therefore, that arises for consideration is as to whether Article 181 of the First Schedule to the Limitation Act of 1908 applies to such proceedings.*'¹⁸ Hamoodur Rahman, CJ (who authored the judgment) observed '*that, after the incorporation of Articles 158 and 178 in the Third Division of the First Schedule to the Limitation Act, the view that has consistently prevailed is that the provisions of the Article [181] are no longer confined to applications under the Code of Civil Procedure*'¹⁹ is no longer applicable. His lordship then proceeded to survey the case law,²⁰ and concluded, that:

'Having examined these decisions with care, we, too, have come to the conclusion that, after the incorporation of Articles 158 and 178 in the First Schedule to the Limitation Act, which make specific provision for applications under the Arbitration Act, 1940, it is no longer possible to say that the Articles contained in the Third Division of the First Schedule to the Limitation Act apply only to applications under the Code of Civil Procedure, because, all the other Articles contained in this Division apply to such applications. With the incorporation of Articles 158 and 178, that reason no longer holds good, and therefore, the scope of Article 181, which is in the nature of a residuary Article, must necessarily be extended to all kinds of applications for which no specific period of limitation has been provided for either in the First Schedule to the Limitation Act or in any other Statute. To hold otherwise would lead to the anomalous result that for applications which have not been expressly provided for in the Third Division of the First Schedule to the Limitation Act there will be no period of Limitation at all. This could not have been the intention of the Legislature.'²¹

Incidentally, all the decisions which were surveyed by his lordship were in arbitration cases.

¹⁸ *M. Imam-ud-Din v Thal Development Authority*, PLD 2012 Supreme Court 123, page 127.

¹⁹ *Ibid*, page 129.

²⁰ *Peoples Bank of Northern India Ltd. v Firm Lekhu Ram & Sons*, AIR 1941 Peshawar 3, *Muhammad Abdul Latif Faruqui v Nisar Ahmad*, PLD 1959 Karachi 465, *Mian Omar Din v Government of Azad Jammu and Kashmir*, PLD 1968 Azad J & K 21 and *West Pakistan Water and Power Development Authority, Lahore v Messrs Omar Sons Ltd.*, PLD 1970 Lahore 398.

²¹ *M. Imam-ud-Din Janjua v Thal Development Authority*, PLD 2012 Supreme Court 123, page 130.

14. The decision in the *M. Imam-ud-Din Janjua* case did not refer to the earlier decision of the Supreme Court in the case of *Naeem Finance Ltd.*,²² despite the fact that Hamoodur Rahman, CJ, had himself presided over the three-Member Bench which had decided it. It would be audacious to assume that the Court had so soon forgotten its own earlier decision. It is more reasonable to presume that their lordships in the latter case (*M. Imam-ud-Din Janjua*) took for granted that the issue in that case had only determined the applicability of Article 181 with regard to its application to arbitration cases. If our understanding is correct than there is no conflict between these two decisions. But, if our understanding is not correct, and it be assumed for arguments sake, that the two decisions express contradictory opinions then the view of the larger three-member Bench (*Naeem Finance Ltd.*) will prevail over the smaller two-member Bench (*M. Imam-ud-Din Janjua*).²³ In *Naeem Finance Ltd.* it was held that, since an application under the Insurance Act, 1938 was not mentioned in any of the articles of the First Schedule to the Limitation Act, therefore, its Article 181 would not apply to such applications:

‘It is, therefore, for consideration whether any period of limitation is prescribed for enforcement of the liabilities arising under the said provisions of law? It will be noticed that under section 106 of the Insurance Act, no suit is instituted but only an application is moved. Therefore, the period provided in Schedule I of the Limitation Act in respect of suits cannot be applied to proceedings arising under the above provision. The only Article which applies to applications is Article 181 of the Limitation Act, but there is consensus of opinion that this Article only applies to applications under Code of Civil Procedure. Thus under Schedule I of the Limitation Act no period of limitation has been provided for an application moved under the above provision of law.’²⁴

These two judgments of this Court had considered whether the Limitation Act is restricted to suits alone. The decision in *Naeem Finance*

²² *Naeem Finance Ltd.* was last heard 30 October 1969 and *M. Imam-ud-Din Janjua* on 24 November 1971 as per the respective law reports.

²³ The following judgments hold state that the decisions of larger Benches prevail over the decisions of smaller Benches: *Muhammad Saleem Fazal Ahmad*, 1997 SCMR 315, page 321 D; *Babar Shehzad v Said Akbar*, 1999 SCMR 2518, page 2522 A; *All Pakistan Newspapers Society v Federation of Pakistan*, PLD 2004 Supreme Court 600, page 621 Z; *Ata Ullah Khan v Surraya Parveen*, 2006 SCMR 1637, page 1640 and *Muhammad Azhar Siddiqui v Federation of Pakistan*, PLD 2012 Supreme Court 774, page 823.

²⁴ *Naeem Finance Ltd. B Ashir Ahmad Rafiqi*, PLD 1971 Supreme Court 8, pages 25-26.

Ltd. held that it was, whereas the decision in the latter case of *M. Imam-ud-Din Janjua* extended its scope to cases under the Arbitration Act, 1940.

15. In our opinion the matter may also be approached from another perspective. Companies are governed by their own self-contained law, which special law should not be overridden, or its scope curtailed, unless the legislative intent to do so is evident. And, such legislative intent, must be unambiguously clear when adversely affecting proprietary rights. Every company is also required to file Form-A (under section 156 of the Ordinance) and this is a public document which shows the members respective shareholding in the company. If shareholders do not diligently, and periodically, examine the company's register of members (or Form-A filings) and resultantly do not seek their remedy within three years, to hold that they stood deprived of their shares would, in our opinion, be brutally unjust.

16. We must also pay heed to the other provisions of the Ordinance, particularly when they assist to better understand and interpret the law. The importance of a company's register is underlined by the fact that to tamper with it constitutes a criminal offence. Section 153 of the Ordinance stipulates that, '*Anyone who fraudulently or without sufficient cause enters in, or omits from the register of members or the register of debenture-holders the name or other particulars of any person shall be punishable with imprisonment for a term which may extend to one years, or with fine which may extend to ten thousand rupees, or with both*'.²⁵ Under the Companies Act, 2017 the punishment for the same offence has been increased to '*imprisonment for a term which may extend to three years or with fine which may extend to one million rupees, or with both*'.²⁶

17. In a number of precedents this Court²⁷ has also held that there is no limitation period in respect of inheritance claims, which would include the right to shares owned by someone who has died. It would be anomalous if a shareholder could not seek rectification of the register of

²⁵ Section 153 of the Companies Ordinance, 1984; section 126(1)(a) of the Companies Act, 2017.

²⁶ Section 127 of the Companies Act, 2017.

²⁷ *Maqbool Ahmad v Hakoomat-e-Pakistan*, 1991 SCMR 2063 [Shariat Appellate Bench] and *Muhammad Iqbal v Allah Bachaya*, 2005 SCMR 1447, at page 1450 A.

members to assert his/her ownership to shares after three years, but after his death his/her heirs could do so.

18. Significantly, Article 181 of the Limitation Act does not state that it also applies to applications filed under the company law. Article 181 is a saving clause, and states, in general terms, that it applies to - *applications for which no period of limitation is provided elsewhere*. To extinguish proprietary rights without a clear and definite provision mandating this, by applying a general clause/provision of the Limitation Act, would be unconscionable. In this regard it would be appropriate to reproduce the following extract from a reputed judgment:

'It is true that provisions of the statutes of limitation must be applied without regard to equitable considerations. Those provisions are founded on the policy of law which, in the interests of the community as a whole, requires that there should be some point after which old and ancient disputes should not be agitated. The periods of limitation prescribed in pursuance of such a policy must necessarily, at least in some cases, be artificial and arbitrary and must be applied regardless of hardship in individual cases. These considerations, however, cannot apply to a case where a particular provision in a statute of limitation is not clear and definite. In construing such provisions considerations of justice and equity cannot be ignored. When more than one interpretation is fairly and reasonably possible, that which leads to manifest absurdity or injustice must be avoided. It would be a lamentable and intolerable state of law if it were not so. The present case furnishes a striking illustration. It is the appellants' contention that although Mst., Satto was completely ignorant of, the existence of the 1913 decree and there was nothing to put her on enquiry about it, yet her right to sue for setting it aside became barred by the law of limitation in 1919, 26 years before she became aware of it. The Courts can yield to such a preposterous contention only if so compelled by some express and unequivocal statutory commandment. In construing such provisions, considerations of justice and equity cannot be ignored. When more than one interpretation is fairly and reasonably possible that which leads to manifest absurdity or injustice must be avoided. It would be lamentable and intolerable state of law if it were not so.'²⁸

19. We are in complete agreement with the aforesaid view expressed 62 years ago by the then West Pakistan High Court that, *when more than one*

²⁸ *Hakman v Satto* (PLD 1958 (WP) Lahore 936, page 941 D & E.

interpretation is fairly and reasonably possible that which leads to manifest absurdity or injustice must be avoided. It would be a lamentable and intolerable state of the law if it were not so. Valuable proprietary rights must not be allowed to be negated, unless the law clearly and expressly stipulates that such rights would expire with the efflux of time. The Constitution, which came into effect on 14 August 1973,²⁹ stipulates that, 'No person shall be deprived of his property save in accordance with law'.³⁰ Another fundamental right, the 'right to acquire, hold and dispose of property'³¹ would also be vitiated if a person's right to property were to be discarded in such a case, and another, who is not entitled thereto, became its owner.

20. In the present case the contesting respondents admit the shareholding of the petitioners but seek to deprive them of their said shares on completely untenable grounds. The contesting respondents also have not produced instruments of transfer or transfer deeds, executed by the petitioners, whereby the said shares could have been transferred to respondent 3, and on the contrary acknowledge that this was not done. It was also illegal to *forfeit* the said shares, as alternatively contended by the contesting respondents. The petitioners had held the said shares for decades and could not be deprived of them nor could their rights therein be arbitrarily extinguished. The act of the contesting respondents in transferring/forfeiting the said shares is completely unsustainable. Consequently, the petitioners are entitled to have their said shareholding restored to their original position, as reflected in Form-A dated 31 October 1985. And, all acts whereby the petitioners said shares, were purportedly transferred to respondent 3, and/or to anyone else, are held to be of no legal effect, and must be immediately undone.

21. The learned Company Judge of the High Court had dismissed the petitioners' application on the ground that it had to be filed within three years as per Article 181 of the First Schedule to the Limitation Act, 1908, which provision, as mentioned above, was not applicable. Therefore, we

²⁹ Article 265(2) of the Constitution of the Islamic Republic of Pakistan.

³⁰ Article 24(1) of the Constitution of the Islamic Republic of Pakistan.

³¹ Article 23 of the Constitution of the Islamic Republic of Pakistan.

set aside the impugned order of the learned Judge as the same does not accord with the law.

22. The learned Company Judge having dismissed the petitioners' application did not consider the need to attend to any of the prayers therein. C. O. No. 31/2015 was filed on 24 August 2015, and was dismissed *vide* impugned order dated 1 October 2019, and this petition has been pending since 2019. Almost seven years have elapsed during which period the petitioners have remained embroiled in litigation, and they continue to be deprived of the said shares. In these circumstances it would not be appropriate to remand the case to the High Court, and, all the more so, when there is no credible challenge to the said shareholding of the petitioners. Therefore, the petitioners' application praying that the Company's register of members be rectified to show that the petitioners are members of the Company and the said shares are theirs is allowed, and all Form-As submitted to the SECP which show otherwise be rectified by the contesting respondents immediately, as under:

- Petitioner 1, Mrs. Naila Naeem Younus as owner of 2,050 shares,
- Petitioner 2, Muhammad Nadeem Younus as owner of 4,050 shares, &
- Petitioner 3, Miss Nadia Younus as owner of 2,050 shares.

In addition, the Company's register of members and all Form-As, which were submitted to the SECP, and show the said shares to have been transferred to respondent 3, namely, Muhammad Naeem Younus, and/or to anyone else, be also rectified and the said shares be restored to the petitioners.

23. This petition is converted into an appeal and allowed in the aforesaid terms. However, with regard to any other grievance which the petitioners may still have, including what was sought by them in prayers (b), (c) and (d) of C. O. No. 31/2015 they may agitate if they want to, and if they elect to do so they should file a statement to this effect in the said case, and if this is done then the same shall be deemed to be pending before the Company Judge to such extent.

24. In conclusion we would like to compliment the assistance provided by the learned counsel, and commend Ms. Minal Tariq, Assistant Director (Litigation), for her clear and confident submissions on behalf of the SECP.

Judge

Judge

Islamabad
28.04.2022
(Farrukh)

Approved for Reporting