

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**

*JUDICIAL DEPARTMENT*

37119 / Writ

08-Nov-2024

From,

The Deputy Registrar(Judicial),  
Islamabad High Court,  
Islamabad.

To,

1 REGISTRAR

PAKISTAN COUNCIL OF ARCHITECTS AND TOWN PLANNERS [PCATP], OFFICE AT D-12 MARKAZ,  
ISLAMABAD

2 CONVENER, ELECTION COMMITTEE

PAKISTAN COUNCIL OF ARCHITECTS AND TOWN PLANNERS [PCATP], OFFICE AT D-12 MARKAZ,  
ISLAMABAD

3 ARCHITECT ARIF CHANGEZI, INCUMBENT CHAIRMAN

PAKISTAN COUNCIL OF ARCHITECTS AND TOWN PLANNERS [PCATP], OFFICE AT D-12 MARKAZ,  
ISLAMABAD

4 FOP THROUGH SECRETARY

M/O HOUSING AND WORKS, CONST. AVENUE, ISLAMABAD

6 CEO,

OATH SYSTEMS PVT. LTD. 387-B, ADAMJEE NAGAR SOCIETY, BLOCK B, ADAMJEE NAGAR SOCIETY,  
KARACHI

**Subject:** W.P. 890/2023 Misc. Other (SB)

Architect S. M. Jahangir Khan Sherpao etc. -VS- Pakistan Council of Architects & Town Planners  
through its Registrar etc.

Dear Sir,

I am directed to forward for information and immediate compliance a copy of this  
Court's order dated 31-10-2024 passed by the Honourable Mr. Justice Babar Sattar in the  
above noted case.

**Decided Matter**



Yours Faithfully,

Assistant Registrar (Writ)

For Deputy Registrar (Judicial)

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PAKISTAN COUNCIL OF ARCHITECTS  
AND TOWN PLANNERS

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**BEFORE THE HON'BLE ISLAMABAD HIGH COURT**

Writ Petition No. 890/2023

1. **Architect S M Jehangir Khan Sherpao**, s/o Sher Muhammad Khan, r/o House #7, Street #32, F-8/1, Islamabad.
2. **Architect Azhar M. Sualehi**, s/o Ahmad Hassan Sualehi, r/o House #393-B, Askari 11, Bedian Road, Lahore Cantt, Lahore.
3. **Architect Farman Ullah Khan**, s/o Aman Ullah Khan, r/o House #75-B, Street #26, F-11/2, Islamabad.
4. **Architect Husnain Raza Khan**, s/o Ahmad Raza Khan, r/o House #23-C, Officer's Colony, Zarrar Shaheed Road, Lahore Cantt, Lahore.

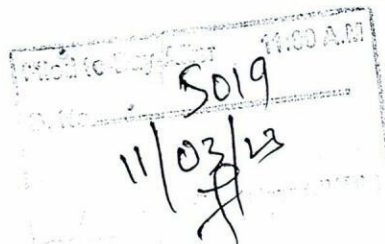
... Petitioners

**Versus**



1. **Pakistan Council of Architects and Town Planners (PCATP)** through its Registrar, PCATP Office, D-12 Markaz, Islamabad.
2. **Election Committee, PCATP**, through its Convener, PCATP Office, D-12 Markaz, Islamabad.
3. **Architect Arif Changezi**, Incumbent Chairman PCATP, PCATP Office, D-12 Markaz, Islamabad.
4. **Federation of Pakistan** through Secretary, Ministry of Housing and Works, Constitution Avenue, Islamabad.
5. **Federal Investigation Agency**, through Director Cybercrime Wing, Cyber Crime Wing Headquarters, 2nd Floor, National Police Foundation Building, Mauve Area, Sector G-10/4, Islamabad.

... Respondents



Form No: HCJD/C-121.  
JUDGEMENT SHEET  
IN THE ISLAMABADHIGH COURT, ISLAMABAD  
JUDICIAL DEPARTMENT

**WRIT PETITION NO. 890 OF 2023**

Architect S.M Jehangir Khan Sherpao and others.

Vs

Pakistan Council of Architects and Town Planners through its Registrar  
and others.

PETITIONERS BY: Mr. Umer Ijaz Gillani, Advocate.

RESPONDENTS BY: Syed Hassan Ali Raza and Mr.  
Muhammad Ameer Khan Durrani,  
Advocates for respondents No.1, 3, 7,  
10, 11 ,13, 16, 17, 18 and 19.  
Mr. Fazal ur Rehman Niazi, Deputy  
Attorney General.  
Mr. Aqeel Akhtar Raja, Assistant Attorney  
General.  
Mr. Muhammad Monib Zafar, Sub-  
Inspector, FIA.  
Mr. Javed Akbar Sheikh, Director and Mr.  
Irfan Ahmed Awan, Section Officer,  
Ministry of Housing and Works,  
Islamabad.

DATE OF DECISION: 31.10.2024.

=====  
**BABAR SATTAR, J.-** This judgment will dispose of the afore-  
titled petition as well as the petitions listed in Annexure-A, as  
they involve challenges to notifications and actions of Pakistan  
Council of Architects and Town Planners ("**PCATP**")

2. The petitioners are primarily aggrieved by notification  
dated 08.0302023 pursuant to which the newly elected members  
of the Executive Committee of PCATP have been notified.

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3. The learned counsel for the petitioners stated that respondent No.1 is a statutory body created under the Pakistan Council of Architects and Town Planners Ordinance, 1983 ("**PCATP Ordinance**") and elections ought to be held every two years for the Executive Committee of such Council pursuant to the Pakistan Council of Architects and Town Planners Bylaws, 1983 ("**Bylaws**"). He submitted that bylaw 43 of the Bylaws regulates the process and the manner in which the election is to be convened and provides that the election committee after the process of counting the ballots in the presence of the candidates is to certify the results of the election. He stated that the election was convened through an e-voting process and for such purpose the Oath Systems Private Limited was appointed to conduct the process digitally. He stated that by email dated 07.03.2023 the Technical Director of the Oath Systems Private Limited reported to the Registrar of respondent No.1 that during the voting process there was a hacking attempt made, which disabled the system for period of three hours and while the system was subsequently revived the sanctity of the votes polled could not be certified and consequently such IT consultant refused to certify the results of the e-voting for the Executive Committee of respondent No.1. He stated that notwithstanding the report by the Technical Director of the Digital Agency conducting the polls, two of the five members of the Election Committee certified the results and two members dissented, while a 5<sup>th</sup> member merely noted that the report of the consultant conducting the election should be attached along with the results and left some ambiguity as to whether he had

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certified the result or not. He stated that the Chairman of respondent No.1, who was also contesting the election once again, directed that a notification of the newly elected Executive Committee based on such faulty process be issued and consequently the impugned notification was issued. He stated that the notification is a consequence of the election, which does not reflect the vote of the members as many of the members could not vote due to the hacking of the system. He further stated that the act of directing that the notification be issued despite the divided opinion of the Election Committee is *mala fide* as the Chairman of respondent No.1 was conflicted in the matter given that he was himself contested the election and according to the results as declared had been elected as Chairman once again. He stated that fairness demanded that an investigation be sought into the hacking by the Federal Investigation Agency along with ordering a re-poll to ensure that the election was carried in a transparent manner and produced result that had sanctity.

4. The learned counsel for respondent No.1 at the outset stated that the petition is not maintainable as it has been held by this Court in **Mazhar Munir vs. Federation of Pakistan, etc (W.P No. 726/2019)** that respondent No.1 is not a person performing functions in connection with affairs of the Federation in view of the functions test laid down by august Supreme Court in **Pakistan International Airlines vs. Tanweer-ur-Rehman (PLD 2010 SC 676)**. The second contention was that under the Bylaws of respondent No.1 an alternative remedy has been provided under bylaw 45. And even if the Court were to conclude

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that the petitioner is a person within the meaning of Article 199 of the Constitution, the petitioners have an efficacious remedy available under the Bylaws framed by respondent No.1. The third contention was that the petitioners have already availed the appropriate remedy as a complaint was filed under bylaw 45 on the date on which the petitioners filed the instant petition and the fact of availing such remedy was not disclosed in the petition and the petitioner has therefore not come to the Court with clean hands. The fourth contention was that there was a misstatement in the memo of the petition that despite filing of a complaint no action has been taken by the FIA. In fact FIA had initiated inquiry No.245/2023 and the respondents had also joined such inquiry and recorded their statements. The fifth contention was that the petition alleges certain facts, which are not borne out by the record and the question of the correct result of the election constitutes a disputed question of fact which cannot adjudicated by this Court in its constitutional jurisdiction.

5. As the respondents have objected to the maintainability of the petition on the basis that PCATP established under the PCATP Ordinance is not a person, in terms of Article 199(5) of the Constitution, and the petitions impugning the actions of PCATP are not maintainable in terms of Article 199(1)(a) of the Constitution, this objection needs to be addressed at the outset.

6. It is the contention of the respondents that the question of whether PCATP is a person for purposes of Article 199(5) read with Article 199(1) of the Constitution, came before this Court in

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**Mazhar Munir**, which was decided by judgment dated 05.03.2019. It was held that PCATP did not qualify as a person upon application of the three pronged "function test" laid down by the Supreme Court in **Tanweer-ur-Rehman** to PCATP.

7. The counsel for the petitioner has painstakingly taken this Court through various precedents to try and argue that the Federal Government continues to exercise significant administrative control in relation to PCATP and as a regulator PCATP is discharging functions that involve the exercise of public power. This Court is however not convinced that the function test as laid down by the Supreme Court (See for example **Hadayat Ullah vs. Federation of Pakistan (2022 SCMR 1691)**, **Pakistan Defence Officers' Housing Authority vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707)**, **Abdul Wahab and others. Vs. HBL and others (2013 SCMR 1383)** and **Pakistan International Airlines vs. Tanweer ur Rehman (PLD 2010 SC 676)**) and that the function test as applied by this Court in **Mazhar Munir** to PCATP suffers from any infirmity. The administration and management of PCATP is in the hands of an executive committee that is not under the substantial control of the Federal Government. PCATP is not financed by the Federal Government and notwithstanding some advisory functions mentioned in Section 8 of the PCATP Ordinance, a perusal of the said statute does not manifest that PCATP exercises sovereign or public power, as already held by this Court in **Mazhar Munir**.

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8. Given that the judgment of this Court in **Mazhar Munir** is binding in terms of the law laid down in **Multiline Associates vs. Ardeshir Cowasjee & 02 others (PLD 1995 SC 423)**, the question of maintainability need not be adjudicated afresh. As the PCATP has been declared to not qualify as a person in terms of Article 199(5) of the Constitution by this Court in **Mazhar Munir**, the petitions are **dismissed** for not being maintainable.

9. In Writ petition No. 2237 of 2023, the petitioner has sought a direction to be issued to the Federal Government for the appointment of a commission of inquiry in terms of Section 32 of the PCATP Ordinance. The petitioner's contention is that an application for such purpose has already been filed with Secretary Ministry of Housing and Works dated 22.06.2023, in which no order has been passed. Let a copy of Writ petition No.2237 of 2023 along with the annexures be sent to Secretary Ministry of Housing and Works, who will treat it as part of the application already pending with him dated 22.06.2023 and decide the same in accordance with law after affording the petitioner an opportunity to be heard within a period of 60 days.

The petition is **disposed of** in the above terms.



Shakeel Afzal/-

SD

(BABAR SATTAR)  
JUDGE

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**ANNEXURE-A**

Sr. No.	Case No.	Case Title
1.	W.P. No.2237/2023	Architect Syed Qasim Abbas vs. Federation of Pakistan through Secretary, Ministry of Housing and Works, Islamabad and others.
2.	W.P. No.3351/2023	Architect Syed Qasim Abbas vs. Architect Irfan Tariq, Acting Registrar, PCATP Office, Islamabad and others.
3.	W.P. No.3350/2023	Architect Jehangir Khan Sherpao vs. Architect Irfan Tariq, Acting Registrar, PCATP Office, Islamabad and others.
4.	W.P. No.3589/2023	Architect Usman Mirza vs. Architect Arif Changezi and others.

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