

**Amendments in the Land Revenue Rules 1968**

**Report No.61**

## **Amendments in the Land Revenue Rules 1968**

The Lahore High Court in the case of Muhammad Afzal vs. Senior Member, Board of Revenue (NLR 2002 Rev 217) held that the appointment of the elder son of deceased Lambardar (village headman) on the principle of primogeniture is not a vested right, being violative of the injunctions of Islam. In reaching this conclusion, the Court relied on the judgment of the Supreme Court in a case, Maqbool Ahmed Qureshi v The Islamic Republic of Pakistan.<sup>1</sup>

Brief facts of the case are, that, clauses (a) (b) (c) of rule 17, clauses (a) (b) of Sub-rule (2) of Rule 19 and provisions of Rules 25 and 26 of the Punjab Land Revenue Rules 1968 were challenged before the Federal Shariat Court on the ground of their repugnancy to the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (SAW). The petitions were dismissed by the Federal Shariat Court through judgments dated 16.2.1991 and 12.2.1992. However, the Supreme Court on appeal declared the principle of primogeniture, and appointment of a minor as headman repugnant to injunctions of Islam <sup>1</sup> .

Before proceeding further, the impugned provisions of law before the Supreme Court need to be reproduced as under:-

### **Rule 17. Matters to be considered in first appointment.--**

In all first appointments of headmen regard shall be had among other matters to.-

- (a) the hereditary claims of the candidate;
  - (b) extent of property in the estate, if there are no sub-divisions of the estate, and in case there be sub-divisions of the estate, the extent of the property in the sub-division for which appointment is to be made possessed by the candidate;
  - (c) services rendered to the Government by him or by his family;
  - (d) his personal influence, character, ability and freedom from
1. PLD 1999 SC 484.
- (e) the strength and importance of the community from which selection of a headman is to be made;
  - (f) his ability to undergo training in Civil Defence in the case of headmen in Tehsils situated along the Border.

### **Rule 19. Matters to be considered in appointment of successor.—**

(1) In an estate or sub-division thereof, owned chiefly or altogether by Government, successor to the office of headman shall be selected, with due regard to all the considerations, other than hereditary claims, stated in rule 17:

Provided that in such an estate or sub-division thereof, notified for the purpose by the Board of Revenue, the selection shall, as far as possible, be made in the manner prescribed by Sub-rule (2) if a suitable heir is forthcoming.

(2) In other estates, the nearest eligible heir, according to the rules of primogeniture shall be appointed unless some custom or succession to the office be distinctly proved but subject, in every case, to the following provisions:-

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- (a) the claim of a collateral of the last incumbent to succeed, shall not be admitted solely on the ground of inheritance; unless the claimant is a descendant, in the male line, of the paternal-great-grandfather of the last incumbent.
- (b) Where a headman has been dismissed in accordance with the provisions of Rule 18, the Collector may refuse to appoint any of his heirs;
  - (i) if the circumstances of the offence, dereliction of duty or disqualification, for which the headman was dismissed, make it probable that he would be unsuitable as a headman;
  - (ii) if there is reason to believe that he has connived at the offence or dereliction of duty for which the headman has been dismissed;
  - (iii) if any disqualification for which the headman has been dismissed, attaches to him;
  - (iv) if he may reasonably be supposed to be under the influence of the dismissed headman or his family to an undesirable extent.

**Explanation.**—If a dismissed headman's heir is considered fit to succeed, regard shall be had to the property which he would inherit.

- (c) The Collector may also refuse to appoint a person claiming as an heir, on any ground which would necessitate or justify the dismissal of that person from the office of the headman.
- (d) A female is not ordinarily eligible for appointment to the office of a headman, but may be appointed, when she is the sole owner of the

estate, for which the appointment has to be made, or, for special reasons.

- (3) Failing the appointment of an heir, a successor to the office shall be appointed in the manner, and with regard to the considerations, described in rule 17.
- (4) Election shall not, in any case, be resorted to as an aid in making appointments under this rule and rule 16.

**Rule 25. Appointment of substitutes for non-resident headmen.--**

- (1) Where an estate is owned by a non-resident land-owner, he may nominate for the Collector's approval, a substitute (Sarbrah) from among the residents in the estate to discharge the duties of headman. If the owner fails to nominate a fit person, the Collector may appoint a substitute from among the resident tenants.
- (2) Where, in an estate owned by more land-owners than one, a non-resident headman is liable for more than half the land revenue of the estate, a substitute for such headman may be appointed from among the resident land-owners or tenants. In making such appointment, the Collector shall consult the wishes of the non-resident headman.

**Rule 26. Appointment of other substitutes and their position.—**

- (1) Where, by reason of old age, physical infirmity, or absence from his circle or estate, with the permission of the Collector, or by reason of his being a minor, or for any other good cause, a headman is unable to perform the duties of his office in person, a substitute may be appointed for the purpose.
- (2) A substitute appointed under this Rule or Rule 25 shall be deemed to be the headman and shall be responsible, equally with the person in whose behalf he is appointed, provided that the Collector may, in each such case direct, from time to time, whether the duties shall be performed by the headman (Lambardar) himself or by the Sarbrah or by both.

The Supreme Court accepted the appeal with the following observation:-

The principle deducible from the injunctions of Islam for appointment against an office, official agency, job or employment has to be made on merit of a person who is honest, trustworthy, bodily strong and possessed of qualities of head and heart and that blood relationship or descent cannot be made basis of claiming preference in the matter of appointment. Thus the provision contained in Sub-rule (2) of Rule 19 of the Rules

providing for the primogeniture as the basis of appointment successor, though interpreted by the Supreme Court as directory rule designed to select a most fit person from amongst eligible who is free from any of the disqualifications, is violative of the principle deducible from injunctions of Islam

The Court held:

For the reasons given above, we hold that Sub-rule (2) of Rule 19 of the Punjab Land Revenue Rules 1968, to the extent noted above is repugnant to the injunctions of Islam as contained in the Holy Quran and Sunnah. Consequently, Rules 25 and 26 are also held to be repugnant to the injunctions of Islam only to the extent they recognize the appointment of a minor or an incapable person as Headman and shall, therefore, cease to have effect with effect from 1.9.1999 on which date this decision shall take effect.

The provisions declared as repugnant to the injunctions of Islam were supposed to have been amended up to 31.8.1999 have not yet been amended. It is therefore, proposed that the following amendments may be made in the Punjab Land Revenue Rules 1968:-

- (1) In Sub-rule (2) of Rule 19.- the expression, "according to the rules of primogeniture", be deleted.
- (2) In Sub rule (1) of Rule 26, the expression , "or by reason of his being a minor", be deleted.

The Commission in its meeting on 11 October 2003 considered the above proposal and approved the proposed amendments in the Land Revenue Rules, 1968 to the effect that for the appointment of Lumberdar (village Headman) the principle of primogeniture alone is not the correct criteria. The appointment of Lumberdar shall be on merit and consideration should be given to the requirements of honesty trustworthiness as well as other qualities of head and heart, so as to ensure that the Lumberdar is a fit person for the job. This recommendation also seeks to bring the Rule in conformity with a ruling of the Supreme Court.

The draft Notification as at Annex approved by the Commission is sent to the Government for consideration.

## **Annex**

### **Notification**

S.R.O. In exercise of the powers conferred by Section 36 of the West Pakistan Land Revenue Act, 1967, the Board of Revenue, with prior approval of Government, is pleased to direct that the following further amendments shall be made in the West Pakistan Land Revenue Rules, 1968, namely:-

In the aforesaid Rules,-

(1) In Rule 19, in Sub-rule (2), the words “according to the rules of primogeniture” shall be omitted; and

(2) In Rule 26, in Sub-rule (1), the words and comma “or by reason of his being a minor”, shall be omitted.

Secretary

