P L D 1975 Supreme Court 244

Present: Muhammad Yaqoob Ali. Salahuddin Ahmed and Anwarul Haq, JJ

Civil Appeal No. 7-P of 1974

SALAHUDDIN AND 2 OTHERS--Appellants

versus

FRONTIER SUGAR MILLS & DISTILLERY LTD., TOKHT BHAI AND 10 OTHERS--Respondents

Civil App al No. 8-P of 1974

SALAHUDDIN AND 3 OTHERS---Appellants
versus
TAJ MUHAMMAD KHANZADA-Respondent

Civil Appeals Nos. 7-P and 8-P of 1974, decided on 11th April 1975.

(On appeal from the judgments and orders of the Peshawar High Court made on the 13th of December 1972 and 9th March of 1973 in W. P. No. 116 of 1972 and F. A. O. No. 10 of 1972, respectively).

(a) Constitution of Pakistan (1972)-

Art. 201(2) and Constitution of Pakistan (1973), Art. 199(2) --Expressions "person performing ..affairs of the Federation, a Province or a Local Authority" in clause (a) and "a person" in clause (b) of Articles-Public limited companies and holders of offices therein like those of Directors, Chief Executives etc.-Whether and when amenable to writ jurisdiction of High Court-.Private organizations or persons as distinguished from Government or Semi -Government agencies and functionaries cannot be regarded as persons performing function in connection with affairs of Federation or Province simply because their activities happen to be regulated try laws made by State-Person including body corporate can be regarded as person performing functions in connection with affairs of Federation etc. if functions entrusted to them are indeed functions of State or if control of organisation vests substantially in hands of Government-Public limited company not created by any statute and governmental control limited only by certain regulations-Such company not a person performing functions in connection with affairs of Federation etc.-Such company not amenable to issuance of writ under clause (2)(a)(i) of Art. 201 of Constitution of Pakistan (1972) or of Art. 199 of Constitution of Pakistan (1973)-Nevertheless offices held by Director and Chief Executive etc. of such public limited company must be regarded as public offices which are of greatest interest to the public and as such its Director etc. are within purview of clause (2)(b)(ii) of Art. 201 of Constitution of Pakistan (1972) and of Art. 199 of Constitution of Pakistan (1973)-High Court competent to issue writ in nature of quo warranto-High Court, however, can grant only declaration as to authority of person to hold office in question but it could not grant a mandamus to restore or re-instate applicant to office.

The power conferred on the High Court under sub-clauses (a) (i) and (a) (ii) of clause (2) of Article 201 of the Interim Constitution can be exercised only in respect of a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a province or a local authority. If the person whose acts, actions or proceed ings are challenged before the High Court, does not fall within any of the specified categories, then he would clearly not be amenable

to this extraordinary jurisdiction. The term 'person' having been defined in clause (5) of the Article itself, and also in the General Clauses Act, does not present much difficulty; nor does the term 'local authority'.

Now, what is meant by the phrase "performing functions in connection with the affairs of the Federation or a Province". It is clear that the reference is to governmental or State functions, involving, in one form or another, an element of exercise of public power. The functions may be the traditional police functions of the State, involving the maintenance of law and order and other regulatory activities; or they may comprise functions pertaining to economic development, social welfare, education, public utility services and other State enterprises of an industrial or commercial nature. Ordinarily, these functions would be performed by persons or agencies directly appointed, controlled and financed by the State, i.e., by the Federal Government or a Provincial Government. However, in recent years, there has been manifest a growing tendency on the part of governments to create statutory corporations for undertaking many such functions, particularly in the industrial and commercial spheres, the belief that, free from the inhibiting effect of red-tapism, these semi-autonomous bodies may prove more effective, flexible and also profitable. Inevitably, Government retains effective control over their functioning by appointing the heads and other senior officers of these corporations, by regulating their composition and procedures by appropriate statutes, and by finding funds for financing their activities. Examples of such statutory corporations are the National Bank of Pakistan, the West Pakistan Water and Power Develop ment Authority, the National Shipping Corporation, the Agricultural Development Bank of Pakistan, and the large number of Universities functioning under their respective statutes. On account of their common attributes, as mentioned in the preceding paragraph, they have all been regarded as persons performing functions in connection with the affairs of the Federation or a Province.
Deputy Managing Director, National Bank of Pakistan v. Ata-ul-Haq P L D 1965 S C 201; Wall Muhammad v. General Manager, WAPDA, Lahore P L D 1964 Pesh. 167; Chairman, East Pakistan Industrial Develop ment Corporation v. Rustam Ali P L D 1966 S C 848; Muhammad Ashraf Pervaiz v. Agricultural Development Bank of Pakistan P L D 1973 Lah. 425; Abdur Razzaq v. WAPDA P L D 1973 Lah. 188 and R. T. H. Janjua v. National Shipping Corporation P L D 1974 S C 146 ref.
However private organizations or persons, as distinguished from government or semi-government agencies and functionaries cannot be regarded as persons performing functions in connection with the affairs of the Federation or a Province simply for the reason that their activities happen to be regulated by laws made by the State. Accordingly, a joint-stock company, incorporated under the Companies Act, for the purpose of carrying on commercial or industrial activity for the benefit of its shareholders, cannot be regarded as a person performing State functions just for the reason that its functioning is regulated by law or that the distribution of its manufactured products is subject to governmental control in the public interest. The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some exercise of sovereign or public power; whether the control of the organization vests in a substantial manner in the hands of Govern ment: and whether the bulk of the funds is provided by the State. If these conditions are fulfilled, then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province; otherwise not.

Now, the Frontier Sugar Mills and Distillery Ltd. is a public limited' company, incorporated under the Companies Act, 1913, like a large number of other such Companies in Pakistan. Although the Provincial Government, holds preferential shares in the Company to the extent of rupees two lacs, yet the bulk of its paid-up capital of rupees ten lacs has come from private shareholders. At one time, the Chief Minister of the Province or the Chief Secretary may have been the ex officio Chairman of the Board, but at the time of filing the writ petition the management was clearly vested in the s elected Board of Directors, functioning through a private person appointed as the

Managing Director by the Board of Directors. In fact, under Article 139, as added in 1950, respondent T. appears to have been appointed to this position for an indefinite period. In these circum stances, the Company obviously remains under its own management, irrespective of the Government's right to nominate one of the Directors. The Company is not an organization or corporation created by a special, statute, nor is it substantially financed and controlled by the Government. The Government control is limited to those regulations which apply to all similar concerns engaged in the sugar industry. Such governmental, control of commercial or industrial activities cannot be regarded as investing joint-stock companies with the character of a person performing functions in connection with the affairs of a Province or a Federation. The High Court was, therefore, clearly right in holding that the Company was not amenable to the issuance of a writ under clause (2) (a) (i) of Article 201 of the Interim Constitution.

As regards the power conferred by clause (2) (b) (ii) of Art. 201 of the Interim Constitution it is in the nature of the well-known prerogative writ of quo warranto. There are significant differences as compared to clauses (2) (a) (i) and (2) (a) (ii), namely:-(a) Whereas under clauses (2) (a) (i) and (2) (a) (ii) the application must be by an aggrieved party, under clause (2) (b) the application can be by 'any person'; and (b) Whereas under the former the person whose act or action is called in question must be a person performing. functions in connection with the affairs of the Federation, a Province or a local authority, under clause (2) (b) (ii) the respondent must be a person holding or purporting to bold a public office. There is no specific mention of the nature of his functions. The reason for enabling 'any person,' as distinguished from an 'aggrieved party', to apply for a writ of quo warranto is that the inquiry relates to a matter in which the public are interested, namely, legality and sanctity of a public office, and not the enforcement of individual rights or redress of individual grievances.

Muhammad Sadeque v. Rafique Ali P L D 1965 Dacca 3 30; R v. Speyer (1916) 1 K B 595; S. M. Wall Ahmed Choudhry v. Mahfuzul Haq Choudhry P L D 1957 Dacca 20; Muhammad Akhtar v. Dr. Khan Sahib P L D 1957 Kar. 387 and M. U. A. Khan v. Rana M. Sultan P L D 1974 S C 228 ref.

The term 'public office' is defined in Article 290 of the Interim Con stitution as including any office in the Service of Pakistan and membership of an Assembly. The phrase 'Service of Pakistan' is defined, in the same Article, as meaning any service, post or office in connection with the affairs of the Federation or of a Province and includes an All-Pakistan Service, any defence service and any other service declared to be a Service of Pakistan by or under Act of the Federal Legislature or of a Provincial Legislature but does not include service as a Speaker, Deputy Speaker or other member of an Assembly. Reading the two definitions together, it becomes clear that the term 'public office', as used in the Interim Constitution, is much wider than the phrase 'Service of Pakistan', and although it includes any office in the Service of Pakistan, it could not really refer to the large number of the posts or appointments held by State functionaries at various levels in the hierarchy of Government.

Henry Farran Darley v. Reg. (1846) 8 E R 520 ref.

A public office is the right, authority and duty created and conferred by law, by which an individual is vested with some portion of the sovereign functions of the Government to be exercised by him for the benefit of the public, for the term and by the tenure prescribed by law. It implies a delegation of a portion of the sovereign power. It is a trust conferred by public authority for a public purpose, embracing the ideas of tenure, duration, emolument and duties. A public officer is thus to be distinguished from a mere employment or agency resting on contract, to which such powers and functions are not attached . . . The determining factor, the test, is whether the office involves a delegation of some of the sovereign functions of government, either executive, legislative or judicial, to be exercised by the holder for the public benefit Unless his powers are of this nature, he is not a public officer.

Ferris on Extraordinary Legal Remedies, 1926 Edn., p. 145; Halsbury, Vol. 11; Lahore Central Co-operative Bank Ltd, v. Saifullah Shah P L D 1959 S C (Pak.) 210; Pakistan v. Nasim Ahmed P L D 1961 S C 445; Fait Ahmed v. Registrar, Co-operative Societies P L D 1962 S C 315; Managing Committee of Co-operative Model Town Society Ltd. v. M. Iqbal P L D 1963 S C 179; Masudul Hassan v. Khadim Hussain P L D 1963 S C 203; Zainul Abidin v. Multan Cent ral Co-operative Bar; s Ltd. P L D 1966 S C 445; Abdul Hafeez v. Chairman, Municipal Corporation P L D 1967 Lab. 1251; R. T. H. Janjua v. National Shipping Corporation P L D 1974 S C 146; M. U. A. Khan v. Rana M. Sultan P L D 1974 S C 228 and Maqbool Elahi v. Khan Abdul Rehman Khan P L D 1960 S C 266 ref:

In the light of the foregoing discussion, the position of a public limited company, in relation to the applicability of the various classes of Article 201 of the Interim Constitution, or Article 199 of the Constitution of 1973, may be summed up by saying that while it cannot ordinarily be regarded as a person performing functions in connection with the affairs of the Federation, a Province or a local authority, simply for the reason that its functioning is regulated by a statute; yet nevertheless the offices held by its Directors and its Chief Executive, which term would include a Managing Director, must be regarded as public offices inasmuch as they involve the performance of public duties which are of the greatest importance to the public interest in the field of the operation of public joint-stock companies under the Company Law. As a consequence, although a joint-stock company may not be amenable to the issuance of a writ under clauses (2) (a) (f) and (2) (a) (ii) of Article 201 of the Interim Constitution, but its Directors and the Chief Executive are within the purview of clause (2) (b) (ii) of the said Article which permits the High Court to issue a writ in the nature of quo warranto, requiring a person within its territorial jurisdiction holding or purporting to hold a public office to show under what authority of law ha claims to hold that office.

Lahore Central Co-operative Bunk Ltd. v. Saifullah Shah P L D 1959 S C 210; In re: The Albert Mills Company Limited and 3 others v. Shirji Manikbhai (1872) 9 Bom. H C R 438; The Queen v. The Government Stock Investment Company Limited (1878) 3 Q B D 442 and Azizur Rehman Choudhry v. M. Nasiruddin P L D 1965 S C 236 ref.

It is also clear that, while acting under clause (2) (b) (ii), the High Court would only grant a declaration as to the authority of the respondent to hold the oft ice in question, but it could not grant a mandamus to restore or re-instate the applicant to that office in case it comes to the conclusion that the incumbent had no authority to hold the same. The High Court would in such a case only declare the office to be vacant, leaving the rightful claimant, if any, to take whatever steps may be open to him to occupy the same.

Besides the general considerations mentioned in the preceding paragraphs, there are additional factors obtaining under the Companies Order, 1972 (P. O. No. 2 of 1972) which make it appear that the offices of the Chief Executive and the Directors of public joint-stock companies must be regarded as public and statutory offices. Since the promulgation of the Companies Order, 1972, the public character of these offices stands emphasized by the greater degree of statutory control imposed by the State on the holders of these offices in the public interest. There can, thus, be no doubt whatsoever regarding the amenability of these offices to the jurisdiction enjoyed by the High Court under clause (2) (b) (ii) of Article 201 of the Interim Constitution.

(b) Constitution of Pakistan (1972)-

Art. 201 and Constitution of Pakistan (1973), Art. 199-Other adequate remedy--Adequacy of alternative remedy must be judged with reference to speed, expense and convenience of obtaining relief under writ jurisdiction.

Adequacy of an alternative remedy is to be judged in relation to the requisite relief. If the relief available through the alternative remedy, in its nature or extent is not what is necessary to give the requisite relief, the alternative remedy is not an "other adequate remedy". If the relief available through the alternative remedy, in its nature and extent, is what is necessary to give the requisite relief, the adequacy of the alter native remedy must further be judged with reference to a comparison of the steed expense or convenience of obtaining that relief through the alternative remedy, with the speed, expense or convenience of obtaining it under writ jurisdiction.

Mehboob Ali Malik v. Province of West Pakistan P L D 1963 Lah. 575 ref:

The other adequate remedies provided by law would, in the ordinary circumstances, have reference to the remedies provided by the particular statute itself which has created the right or obligation and not a general remedy at law, as for example by a suit. On the other band, if the remedy sought for is in substance a remedy which is available tinder the ordinary law then a suit and not the extraordinary remedy should be the appropriate remedy, for, this remedy is not intended to be a substitute for the ordinary forms of legal action. But where this is not the case the remedy by way of a suit can hardly be considered to be an adequate alternative remedy. A suit is by no means as inexpensive or speedy or beneficial a remedy as the remedy provided under writ jurisdiction.

Aniuman-e-Ahmadiya v. D. C., Sargodha P L D 1966 S C 639 ref.

(c) Constitution of Pakistan (1972)---

Art. 201--Relief claimed by petitioner under clause 2(a)(i) High Court, nevertheless, cannot refuse relief under clause (2)(b)(ii).

It is indeed true that in the High Court the relief claimed by the appellants was so worded as to fall under clauses (2)(a)(i) and (2)(a)(ii) of Article 201 of the Interim Constitution, and attention was not directed to the provisions contained in clause (2)(b)(ii) thereof, but this failure on the part of the appellants did not relieve the High Court of its constitutional duty to afford relief where it was lawfully due. The appellants had invoked the extraordinary jurisdiction of the High Court, and it mattered little whether the relief claimed by them fell under one clause or the other of the relevant provision of the Constitution. To deny relief to the citizen on such a hyper technical ground would, in our view, amount to a negation of the beneficial jurisdiction conferred by the Constitution on the High Court in the larger public interest. In any case, the question was indeed one of law touching the interpretation of the Constitution and permission to raise such a question has invariably been accorded by this Court even though the matter was not agitated in the Courts below. Relief cannot be refused to the appellants only on the ground that they did not invoke clause (2)(b)(ii) of Article 201 in the High Court.

(d) Constitution of Pakistan (1972)-

-- Art. 201-Joint Stock Company-Declaration by High Court under Art. 201 regarding lawful authority of incumbent of office such as Director or Chef Executive-Does not amount to inter ference with internal management of Company.

The offices of Director or Chief Executive of a joint-stock company are public offices, and for that reason they are amenable to the jurisdiction of the High Court under Article 201 of the Interim Con stitution. That being so, any direction or declaration regarding the lawful authority of the incumbent of such an office, or the re-instatement of a duly elected or appointed Director or Chief Executive would not amount to interference with the internal management, but would be, on the contrary, a step for the

advancement of the public interest by ensuring that the Company is managed according to law by those who are legitimately entitled to do so.

(e) Interpretation of statutes-

--Provisions to be harmoniously construed-Principle, however, cannot be stretched to placing artificial or untenable interpretation.

It is indeed one of the principles of interpretation that the various provisions of a statute should be harmoniously construed, so that none is rendered nugatory, but the principle cannot be stretched to placing an entirely artificial and untenable interpretation on one provision, so that another provision may be saved. Syed Sharifuddin Pirzada, Senior Advocate (Bilal Ahmad. Advocate with him) and M. A. Rahman, Advocate-on-Record for Appellants (in both the cases).

Mahmood Ali Qasuri, Senior Advocate and J. D. Akbarji, Advocate-on -Record for Respondents Nos. 1, 2 and 7 (in Civil Appeal No. 7-P of 1974).

Other Respondents: Ex parte.

Mahmood Ali Qasuri, Senior Advocate and J. D. Akbarji, Advocate-on -Record for Respondent (in Civil Appeal No. 8-P of 197:1).

Dates of hearing: 3rd to 11th February 1975.

JUDGMENT

ANWARUL HAQ, J.--This judgment will dispose of Civil Appeals bearing Nos. 7-P and 8-P of 1974, which concern the same subject-matter, namely, the legality of the removal of appellant No. 1, Salahuddin Khan, from the office of Chief Executive of the Frontier Sugar Mills and the Distillery Ltd., Takht Bhai, and of appellants Nos. 2 and 3, Sairab Hayat Khan and Dost Mohammad Khan Sherpao, from the office of Director of the said Company; as well as the legality of the election of respondents Nos. 2 to 10 as Directors of the same Company, and of respondent No. 2, Taj Mohammad Khanzada, as its Chief Executive.

The Company was incorporated as a joint-stock company in 1938 with a paid-up capital of Rs. ten lacs, out of which an amount of Rs. two lass was subscribed by the Government of the North-Vest Frontier Province, in the shape of preferential shares. The appellants as well as the contesting respondents are substantial shareholders in the Company. It is stated that in the beginning the Chief Minister of the Province used to be the Chairman of the Board of Directors. He was later succeeded by the Chief Secretary of West Pakistan, and one Director of the Company was also nominated by the Government.

By a resolution of the extraordinary general meeting of shareholders held on 23-4-50, Article 139 was added to the Articles of Association, as under:-

"139. Business of the Company shall be conducted by the Managing Director under the control of the Board.
(a) The Board may exercise this control through the Chairman or a committee of Directors. The Board may frame rules and regulations for the purpose of such control.

(b) The General Manager shall conduct such business of the Company under the control and supervision of the Managing Director that may be delegated to him by the Board or the Managing Director.

(c) Mr. Taj Mohd. Khan is hereby appointed the Managing Director of the Company."

In pursuance of this newly added Article, Taj Mohammad Khanzada started functioning as the Managing Director of the Company and continued in that capacity until the 15th of January 1972, when the President of Pakistan promulgated the Companies (Managing Agency and Election of Directors) Order, 1972 (President's Order 2 of 1972), hereinafter referred to as the Companies Order. Article 4 of this Order terminated forthwith all agreements or contracts entered into by a Company with its Managing Agent, and further provided that the Managing Agent and the Directors of the Company nominated by the Managing Agent, shall cease to hold their respective offices. Clause (2) of this Article contemplated that the remaining "Directors of the Company shall appoint a person to be the Chief Executive for the management and administration of the affairs of the Company subject for the general supervision and control of the Directors. Clause (3) of the same Article laid down that the Chief Executive shall hold office on such terms .as the Directors may determine and shall, if he is not already a Director of the Company, be deemed to be its Director. Article 8 of the Order prescribed the minimum number of Directors as being three for every private company and seven for every public company. According to Article 9, on the expiration of the period of 180 days following the commencement of this Order, or on the date of the first annual general meeting of a company held after such commencement, whichever is due earlier, all Directors of a Company for the time being were to stand retired from office, provided that the Directors so retiring were to continue to perform their functions until their successors were elected. Article 10 of the Order prescribed a voting procedure for the election of Directors which may be described as cumulative voting, as every shareholder was to have such number of votes as was equal to the product of the number of voting shares held by him and the number of Directors to be elected. Under Article 11, the Directors including the Chief Executive were to hold office for a period of three years. Under Article 12 a procedure was laid down for the removal of Directors etc. and it was provided that "a resolution for removing a Director elected in the manner provided for in Article 10, or for reducing the number of Directors, shall not be deemed to have been passed if the number of votes against it is equal to, or exceeds, the number of votes that would have been necessary for the election of a Director at the immediately preceding annual election of Directors in the manner aforesaid."

A meeting of the Board of Directors of the Company was held on the 24th of January 1972, and among other items, the implications of the Companies Order were considered. At item No. 7 of the minutes of that meeting, it is recorded that "Mr. Taj Mohammad Khanzada is appointed Managing Director for a term of three years on the same remuneration, i.e., salary, commission, entertainment allowance, privileges etc. as allowed to him earlier by the general body of shareholders." At item 10, it is recorded that Khan Sadullah Khan be appointed as a Director to complete the minimum number of Directors, namely, seven, as prescribed by the Order Ion public limited companies. The meeting was presided over by Taj Mohammad Khanzada.

The Board of Directors met again on the 10th of March 1972, and fixed the number of Directors of the Company at nine. On 31-3-72, the ordinary annual general meeting of the shareholders of the Company was held under the Chairmanship of Taj Mohammad Khanzada. The shareholders were informed by the Chairman that the Board of Directors bad fixed the number of the Directors of the Company at nine, (including the Chief Executive) as required by the Companies Order; and that the seven existing Directors were offering themselves for re-election. The shareholders were further informed that for the two extra vacancies only two nomination papers had been duly proposed and seconded, namely, those of the appellant Salahuddin Khan and respondent No. 10, Mohammad Yaqoob Khan. As there was no contest for re-election of the existing seven Directors and for the two new vacancies, all the nine persons in the field were unanimously declared elected.

The newly elected Directors met on the 15th of April 1972, and unani mously appointed Khan Fida Mohammad Khan as the Chairman of the Board of Directors for a period of three years. They then proceeded to consider the effect of President's Order 2 of 1972. At item 3 of the minutes of this sleeting it is recorded that Presidential Order 2 of 19 72 was discussed by the members and it was resolved that resolution No. 7 approved by the Board of Directors on 24-1-1972 appointing Taj Mohammad Khanzada as Managing Director for a period of three years was not in conformity with the Presidential Order, and it was, therefore, unanimously decided to rescind and annul the Fame, especially because it was passed in the presence of Tai Mohammad Khanzada and under his Chairmanship.

Having annulled Resolution No. 7 dated 24-1-72 regarding the appoint ment of Taj Mohammad Khanzada as the Managing Director of the Company for a period of three years, the Board of Directors then took up the question of the appointment of the Chief Executive. Respondent Mohammad Yaqub Khan proposed the name of the appellant Salahuddin Khan, and this proposal was seconded by appellant Dost Mohammad Khan Sherpao, whereas respondent No. 7 Sadullah Khan proposed the name of respondent No. 2 Taj Mohammad Khanzada, and this proposal was seconded by respondent No. 8. Capt. Asad Khanzada. After considering these proposals for a considerable time, "the members then arrived at a unanimous decision and decided that Mr. Salahuddin Khan should be appointed as Chief Executive of the Company in terms of the Presidential Order, while Mr. Taj Mohammad Khanzada was appointed as Resident Director." The Board then went on to decide, in terms of Article 139 of the Articles of Association read with the Presidential Order, that the Board of Directors, shall control and supervise the day-to-day administration through the Chairman Khan Fida Mohammad Khan, and a generate Administrative Committee, consisting of the Chairman and two Directors, namely, Khan Sadullah Khan and Khan Sairab Hayat Khan. The Committee was appointed for a period of six months, and the Board of Directors delegated all its powers to this Committee. It was further decided that this Committee would fix the allowances and facilities for the incumbents of various offices the Directors and the staff, and also fix their duties, responsibilities and obligations, and obtain sanction from the Controller of Capital Issues wherever necessary.

On 12-5-1972 respondent No. 2, Taj Mohammad Khanzada and one Zaib Alam Khanzada, who is not a party to the present proceedings, filed., a suit, being Suit No. 114/1, in the Court of the Senior Civil Judge, Mardan,, praying for a declaration that the proceedings of the annual general meeting of the shareholders of the Company held on the 31st of March 1972 in respect of election of nine Directors were null and void. A similar declaration was also prayed for in respect of the appointment of appellant Salahuddin Khan as Chief Executive in the meeting held on 15-4-1972. It was further prayed that it be also declared that the appointment of plaintiff No. 1, i.e., Tai Mohammad Khanzada as the Managing Director for a period of three years by the unanimous resolution of the Board of Directors dated the 24th of January 1972 after the promulgation of the Companies Order, continued to hold good till the expiry of his term, or until another Managing Director is appointed according to law. Finally, a declaration was also sought regarding the continued appointment of plaintiff No. 1 and defendants Nos. 2, 3, 4, 5 and 6 as the Directors of the Company until new Directors were appointed through a fresh election in a general meeting of the shareholders. The plaintiff also prayed for a perpetual injunction restraining the illegally elected Directors, including the present appellant Salahuddin Khan, from functioning in their impugned capacities.

Alongwith the plaint, Taj Mohammad Khanzada and his co-plaintiff also filed an application for the grant of a temporary injunction to restrain the present appellant Salahuddin Khan from interfering with the functioning of the plaintiff as Managing Director of the Company. This application, was dismissed by the learned Senior Civil Judge, mardan, on 29-5-1972, mainly on the ground that Article 16(2) of the

Companies Order contained a prohibition against the grant of a temporary injunction. Having failed to obtain ad interim relief, the plaintiffs withdraw their suit on 31-5-1972, without the permission of the Court to file another suit, if necessary. In the order made on that date, the trial Court observed that "the plaintiffs do not wish to proceed with the suit and according to the application made by them today, it fails and is hereby dismissed, but the parties are left to bear their own costs."

Simultaneously with pursuing his suit before the learned Senior Civil Judge, Mardan, it appears that Taj Mohammad Khanzada initiated other steps also in the shape of requisitioning an extraordinary meeting of the general body of shareholders for the purpose of setting aside decisions taken by the shareholders on 31-3-1972, and by the Board of Directors on 15-4-1972, and to elect new Directors in place of the nine Directors who had already been elected at the annual general meeting. Ten shareholders, who had participated in the said meeting, sent a requisition in this behalf on 27-5-1972. On the receipt of this requisition, respondent No. 5, Mohammad Ayoob Khanzada, purporting to act as the Secretary of the Company, issued a notice for the extraordinary meeting to be held on 15-6-1972.

Now, it was the turn of the appellant Salahuddin Khan and his parti sans to invoke the aid of the Civil Court by filing a suit on 7-6-1972 for a permanent injunction against the holding of the requisitioned meeting on the 15th of June 1972, and also for the purpose of restraining Taj Mohammad Khanzada from dealing with the funds and the property of the Company or in any manner interfering with the functioning of Salahuddin Khan as the Chief Executive of the Company. These plaintiffs also filed an application for a temporary injunction, which was, however, dismissed by the learned Addi tional District Judge, Peshawar, by his order dated the 14th of June 1972. The plaintiffs thereupon filed an appeal in the Peshawar High Court on 4-7-1972 which was dismissed by a learned Single Judge on 9-3-1973. Civil Appeal No. 8 of 1974 is directed against this order of the High Court. It may be stated that the plaintiffs' suit is still pending in the Court of the learned Civil Judge at Mardan.

As the appellants did not succeed in obtaining a temporary injunction to restrain the holding of the extraordinary general meeting of the share holders on 15-6-1972, the same was duly held on the appointed date. The appellants, of course, did not attend. Khan Sadullah Khan was elected as the Chairman of the meeting. He explained to the shareholders that the mandatory provisions contained in Article 10 of the Companies Order, read with Article 12 thereof, bad not been complied with while electing nine Directors at the annual general meeting of the shareholders on 31-3-1972, as no polling was held, and, therefore, that election was null and void. The shareholders present accordingly passed a resolution declaring null and void the resolution of the annual general meeting of the 31st of March 1972 on item No. 3 of the agenda of that meeting, with the result that the election of nine Directors was rescinded. It was then decided to hold fresh election for nine Directors (including the Chief Executive/ Managing Director) in accordance with the mandatory provisions of the, Presidential Order 2 of 1972. Eleven nomination papers were submitted, and the votes obtained by each candidate, in accordance with the voting procedure prescribed by Article 10 of the Companies Order, were recorded. The nine candidates obtaining the highest number of votes were declared elected. The shareholders then proceeded to declare null and void the proceedings taken by the previously elected Board of Directors on 15-4-1972, with the result that the appointment of appellant Salahuddin Khan as Chief Executive, and that of respondent No. 1, Taj Mohammad Khanzada as Resident Director, stood rescinded. Having thus cleared the decks, the extraordinary general meeting of the shareholders unanimously decided to appoint Taj Mohammad Khanzada as the Chief Executive/Managing Direc tor of the Company for a period of three years on the same terms and conditions as already enjoyed by him.

On 24-11-1972, appellants Salahuddin Khan, Sairab Hayat Khan and Dost Mohammad Khan Sherpao filed Writ Petition No. 116 of 1972 in the Peshawar High Court praying

for a declaration that the proceedings of the extraordinary general meeting of the shareholders of the Company held on the 15th of June 1972, resulting in the removal of the appellants from their respective offices, and the election of the respondents in their place was without jurisdiction and of no legal effect. The petition was dismissed in limine by a Division Bench of the High Court on 13-12-1972. The High Court took the view that the Frontier Sugar Mills and Distillery Ltd. was not a person performing functions in connection with the affairs of the Province and, accordingly, not amenable to the issuance of a writ under sub-clause (2) (a) (i) of Article 201 of the 1972 Interim Constitution which was in force on the date the writ petition was filed. The learned Judges also observed that the writ was, in fact, being sought against a private person, namely, respondent Taj Mohammad Khanzada. Finally, they took note of the fact that the appellants had already invoked an adequate alter native remedy by filing a civil suit, seeking practically the same reliefs as were prayed for in the writ petition. Civil Appeal No. 7-P of 1974 has .arisen out of the dismissal of this Constitution petition.

We shall first take up Civil Appeal No. 7-P of 1974, which raises substantial questions of law of public importance relating to the amenability of public limited companies, and holders of offices therein like those of Director and Chief Executive, to the writ jurisdiction of the High Court under Article 201 of the Interim Constitution of 1972 or the corresponding Arti cle 199 of the permanent Constitution of 1973. While granting leave to appeal the questions requiring consideration were formulated thus:

(a) That the High Court had erred in thinking that the respondent. Company was not a person within the meaning of clause (2) (a) (i) of Article 201 of the Interim Constitution, and, therefore, not amen able to its writ jurisdiction, for facts were brought to the notice of the learned Judges to show that the Provincial Government was an active party in the management of the affairs of this Company particularly, under Article ;05 of the Articles of Association which gives to the Provincial Government the right to nominate its representative for attending the meetings of the shareholders, and for contesting election to the office of Director;

(b) That in any case the requirement that the respondent should be a person performing functions in connection with the affairs of the Federation or a Province is not attracted for the issuance of a writ in the nature of quo warranto as contemplated by clause (2) (b) (ii) of the said Article, as no such condition is in fact contained in this clause, which deals with a case of a person holding or puporting to hold a public office. According to the learned counsel, the office of the Director or the Chief Executive of a joint-stock company is a public office, and especially so in the present case, for the reason that these appointments were made under a statutory Order, namely, Companies. (Managing Agency and Election of Directors) Order, 1972; and

(c) That in the circumstances of the case, the pendency of a civil suit could not be regarded as an adequate alternative remedy in view of the time and expense involved in pursuing that remedy.

Clause (2) of Article 201 of the Interim Constitution, which is relevant in the present context, is as follows

"201.-(2) Subject to this Constitution, a High Court may, if it is tisfied that no other adequate remedy is provided by law-

(a) on the application of any aggrieved party, make an order-

(i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is,,, not permitted by law to do, or to do anything he is required by law to do; or

(ii) declaring that any act done or proceeding taken within the terri torial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation a Province or a local authority, has been done or taken without lawful authority, and is of no legal effect ; or

(b) on the application of any person, make an order-

(ii) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may, satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner ; or

(ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to chow under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority including any Government, exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the fundamental rights conferred by Chapter I of Part 1I,"

Clause (5) of this Article defines a "person" as including "any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or Tribunal, other than the Supreme Court, a High Court or a Court or Tribunal established under a law relating to the Defence Services of Pakistan".

Clause (1) of Article 199 of the 1973 Constitution is in identical terms, and clause (5) of that Article also contains the same definition of the term "person". Both these Articles are in pari materia with Article 98 of the abrogated Constitution of 1962.

It will be seen that the power conferred on the High Court under sub-clauses (a)(i) and (a)(ii) of clause (2) of Article 201 of the interim Constitu tion can be exercised only in respect of a person performing, within the territorial jurisdiction of the Court, functions in connection with the affair of the Federation, a Province or a local authority. If the person whose acts, actions or proceedings are challenged before the High Court, does not fall within any of the specified categories, then he would clearly not be amenable to this extraordinary jurisdiction.

The term `person' having been defined in clause (5) of the Article itself, and also in the General Clause: Act, does not present much difficulty; nor does the term `local authority'. As observed by this Court in Deputy Managing Director, National Bank of Pakistan v. Ata-ul-Haq (P L D 1965 S C 201) "the expres sion "local authority" has been used in statutory phraseology in the Indian sub-continent for a great many years, and is always understood to mean an authority which is entrusted with the administration of a local fund. Local authorities are bodies exercising within limited territories included in a Province, powers which belong to the Province, but which by statute are delegated to the local authority. A local authority is ordinarily charged with functions of self-government, and has power of making bye-laws, of imposing taxation, and of maintaining and administering a local fund. In fact, it is evident from the order in which Article 98 mentions the three tiers of authorities that these are in a descending order of importance, first i.e., the Centre, being the most important, a Province being next in order of importance, and a local authority being the last in that order."

Now, what is meant by the phrase "performing functions in connection with the affairs of the Federation or a Province." It is clear that the reference is to governmental or state functions, involving, in one form or another, an element of exercise of public

power. The functions may be the traditional police functions of the State, involving the maintenance of law and order and other regulatory activities; or they may comprise functions pertaining to economic development, social welfare, education, public utility services and other State enterprises of an industrial or commercial nature. Ordinarily, these functions would be performed by persons or agencies directly appointed, controlled and financed by the State, i.e., by the Federal Government or a Provincial Government. However, in recent years, there has been manifest a growing tendency on the part of Govern ment to create statutory corporations for undertaking many such functions, particularly in the industrial and commercial spheres, in the belief that free from the inhibiting effect of red-tapism, these semi-autonomous bodies may prove snore effective, flexible and also profitable. Inevitably, Government retains effective control over their functioning by appointing the heads and other senior officers of these corporations, by regulating their composition and procedures by appropriate statutes, and by finding funds for financing their activities.

Examples of such statutory corporations are the National Bank of Pakistan, the West Pakistan Water and Power Development Authority, the National Shipping Corporation, the Agricultural Development Bank of Pakistan, and the large number of Universities functioning under their respective statutes. On account of their common attributes, as mentioned in the preceding paragraph, they have all been regarded as persons performing functions in connection with the affairs of the Federation or a Province.

(See Deputy Managing Director, National Bank of Pakistan v. At-ul-Haq (P L D 1965 S C 201), Wall Muhammad v. General Manager, WAPDA, Lahore (P L D 1964 Pesh. 167), Chairman, East Pakistan Industrial Development Corporation v. Rustom Ali (P L D 1966 S C 848), Muhammad Ashraf Pervaiz v. Agricultural Development Bank of Pakistan (P L D 1973 Lah. 425), Abdur Razzaq v. WAPDA (P L D 1973 Lah. 188) and R. T. II. Janjua v. National Shipping Corporation (P L D 1974 S C 146).

However private organizations or persons, as distinguished from govern ment or semi-government agencies and functionaries cannot be regarded a persons performing functions in connection with the affairs of the Federation or a Province simply for the reason that their activities happen to be regulat ed by laws made by the State. Accordingly, a joint-stock company, incorporated under the Companies Act, for the purpose of carrying on commercial or industrial activity for the benefit of its shareholders, cannot be regarded as a person performing State functions, just for the reason that its functioning is regulated by law or that the distribution of its manufactur ed products is subject to governmental control in the public interest. The primary test must always be whether the functions entrusted to the organiza tion or person concerned are indeed functions of the State involving same exercise of sovereign or public power; whether the control of the organiza tion vests in a substantial manner in the hands of Government; and whether the bulk of the funds is provided by the State. If these conditions are fulfilled, then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province; otherwise not.

Now, the Frontier Sugar Mills and Distillery Ltd., is a public limited company, incorporated under the Companies Act, 1913, like a large number of other such Companies in Pakistan. Although the Provincial Government holds preferential shares in the Company to the extent of Rs. two lacs, yet the bulk of its paid-up capital of Rs. ten lacs has come from private share holders. At one time, the Chief Minister of the Province or the Chief Secretary may have been the ex officio Chairman of the Board, but at the time of filing the writ petition the management was clearly vested in the elected Board of Directors, functioning through a private person appointed as the Managing Director by the Board of Directors. In fact, under Article 139, as added in 1950, respondent Taj Muhammad Khanzada appear to have been appointed to this position for an indefinite period. In these circumstances, the Company obviously remains under its own management irrespective of the Governments right to nominate

one of the Directors. The Company is not an organization or corporation created by special statute, nor is it substantially financed and controlled by the Government. The Government control is limited to those regulations which apply to all similar concerns engaged in the sugar industry. Such governmental control of commercial or industrial activities cannot be regarded as investing joint-stock companies with the character of a person performing functions in connection with the affairs of a Province or a Federation. The High Court was, therefore, clearly right in holding that the Company was not amenable to the issuance of writ under clause (2)(a)(i) of Article 201 of the Interim Constitution.

Turning now to the second question regarding the applicability of clause (2)(b)(ii) of Article 201 of the Interim Constitution, we find that the power conferred by this clause is in the nature of the well-known prerogative writ of quo warranto. There are significant differences as compared to clauses (2)(a)(t) and (2)(a)(h), namely:-

(a) Whereas under clauses (2)(a)(i) and (2)(a)(li) the application must be by an aggrieved party, under clause (2)(b) the application can be by 'any person'; and

(b) whereas under the former the person whose act or action is called in question must be a person performing functions in connection with the affairs of the Federation, a Province or a local authority, under clause (2)(b)(ii) the respondent must be a person holding or purporting to hold a public office. There is no specific mention of the nature of his, functions.

The reason for enabling 'any person', as distinguished from an' aggrieved party', to apply for a writ of quo warranto is that the inquiry relates to i matter in which the public are interested, namely, legality and sanctity of a public office, and not the enforcement of individual rights or redress of individual grievances. (See Muhammad Sadeque v. Rafique Ali (P L D 1965 Dacca 330), R. v. Speyer ((1916) 1 K B 595), S. M. Wall Ahmed Choudhry v. Mahfuzul Haq Choudhry (P L D 1957 Dacca 209), Muhammad Akbar v. Dr. Khan Sahib (P L D 1957 Kar. 387) and M. U. A. Khan v. Rana M. Sultan (P L D 1974 S C 228).

The term 'public office' is defined in Article 290 of the Interim Constitution as including any office in the Service of Pakistan and membership) of an Assembly. The phrase 'Service of Pakistan' is defined, in the same) Article, as meaning any service, post or office in connection with the affair of the Federation or of a Province and includes an All-Pakistan Service, any defence service and any other service declared to be a Service of Pakistan by or under Act of the Federal Legislature or of a Provincial Legislature but does not include service as a Speaker, Deputy Speaker or other member of an Assembly. Reading the two definitions together, it becomes clear that the term 'public office', as used in the Interim Constitution, is much wider than the phrase 'Service of Pakistan', and although it includes any office it, the Service of Pakistan, it could not really refer to the large number of posts or appointments held by State functionaries at various levels in the hierarchy of Government. As early as 1846, the House of Lords in Henry Farran Darley v. Reg. ((1846) 8 E R 520), expressed the view that "a proceeding by informa tion in the nature of quo warranto will lie for usurping any office, whether created by Charter of the Crown alone, or by the Crown with the consent of Parliament, provided the office be of a public nature and a substantive office, and not merely the function or employment of a deputy or servant held at the will and pleasure of others". Their Lordships held the office of Treasurer of the public money of the county of the city of Dublin to be an office for which an information in the nature of a quo warranto would lie. In other words, their Lordships excluded, from the purview of the term 'public office', the large number of servant of the Crown who were not holding any statutory, representative or elective office.

This view seems to have held the ground throughout. As summed up Ferris (Extraordinary Legal Remedies, 1925 Edition, p. 145), "a public office is the right,

authority and duty created and conferred by law, by which an individual is vested with some portion of the sovereign functions of the Government to be exercised by him for the benefit of the public, for the term and by the tenure prescribed by law. It implies a delegation of a portion of the sovereign power. It is a trust conferred by public authority for a public purpose, embracing the ideas of tenure, duration emolument and duties. A public officer is thus to be distinguished from a mere employment or agency resting on contract, to which such powers and functions are not attached . . . . . The determining factor, the test, is whether the office in volves a delegation of some of the sovereign functions of Government, either executive, legislative or judicial, to be exercised by the holder for the public benefit. Unless his powers are of this nature, he is not a public officer."

This definition of the term 'public office', as well as the almost analogous definition given by Halsbury (in Volume 11) have been referred to with approval in Lahore Central Co-operative Bank Ltd. v. Saifullah Shah (P L D 1959 S C (Pak.)210), Pakistan v. Nasim Ahmed (P L D 1951 SC 445), Faiz Ahmed v. Registrar, Co-operative Societies (P L D 1962 S C 315), Managing Committee of Co-operative Model Town Society Ltd. v. M. Iqbal (P L D 1963 S C 179), Masudul Hassan v. Khadim Hussain (P L D 1963 S C 203), Zainul Abiain v. Multan Central Co-operative Bank Ltd. (P L D 1966 S C 445), Abdul Hafeez v. Chairman, Municipal Corporation (P L D 1967 Lah. 1251), R. T. H. Janjua v. National Shipping Corporation (P L D 1974 S C 146), and M. U. A. Khan v. Rana M. Sultan (P L D 1974 S C 228). In all these cases the question had arisen directly or indirectly whether the office in dispute was a public office to which restoration could be ordered by way of mandamus.

The question of the nature of the office held by the Director of a Joint. Stock Company, namely, the West Punjab Steel Corporation Ltd., was the subject of examination by this Court to Maqbool Elahi v. Khan Abdul Rehman Khan (P L D 1960 S C 266). This was a case under Article 170 of the 1956 Constitution. While considering the question whether the admission or re-instatement of a duly qualified Director on the Board of Directors of this Company should be enforced by a writ, the Court observed that "although here no statutory duty is involved, it is undeniable that a duly qualified Director has a legal right to sit on the Board of Directors and that this is a right which is of the greatest importance to the pubic interest, in the field of the operation of public joint stock companies under the Company law. The composition of the Board of Directors of a company incorporated as a public company, in whose operation the public at large has an interest, and whose constitu tion is required to be determined by the wishes of the shareholders, is a matter of the greatest interest to the public. Putting it slightly differently, it is of interest to the shareholders being themselves members of the public, and it is a legal right vesting in them, to elect persons to be members of the Board of Directors which shall conduct the affairs of the company, and it is directly in the interest of the public at large which has dealings with the company that it should know whom it is dealing with an f that the dealings are not with one or a few of the Board of Director, but that all the Directors duly elected by the shareholders should be functioning together, within the relevant instruments, for the conduct of the affairs of the company. Therefore, it is conceivable as a public duty bearing upon the conduct of the members of a Board of Directors that they shall admit to their number every person who is qualified to be a Director of a company."

"Even upon the basis of the narrow requirements that there should be either a statutory duty involved, or a legal right to be enforced for the purposes of a public duty which was attracted by the circumstances, it is easily possible to regard the admission of a duly qualified Director to the Board of Directors of a public company as being within the scope of a writ."

On this reasoning a mandamus was granted for the re-instatement of duly qualified Directors, but the writ was refused in so far as the office of the Secretary of the company was concerned, on the ground that the Secretary was to be appointed only for

the performance of secretarial duties, and the Articles of Association of the company did not suggest that he was to be an officer of the company. In refusing the writ in the case of the Secretary of the company reliance was further placed on the previous decision in the case of Lahore Central Co-operative Bank Ltd. v. Saifullah Shah (P L D 1959 S C (Pak.) 210) relating to an employee of a Co-operative Bank who was not an office-holder.

In arriving at the conclusion, in Maqbool Elahi's case, that a writ of mandamus was available for, the purpose of restoring to office Directors of a joint-stock company, the learned Judges relied upon two ancient precedents, namely, In re: The Albert Mills Company Limited v. Shivji Manikbhai ((1872) 9 Bom. H C R 438), and The Queen v. The Government Stock Investment Company Limited ((1878) 3 Q B D 442). The observations made in the former case appear to be of direct relevance to the point we are considering here. It was observed by Green J., while considering the question of the availability of a writ of mandamus, that "I am unable to draw any distinction in this respect between trading corporations established by Royal Charter or special Act of Parliament and those established under the general powers of the statutes for the registration and incorporation of joint-stock companies. Both classes of corporations are alike private as regards their nature and the purposes for which they are established, and alike public having regard to their derivation of a corporate character from Royal prerogative or legislative power .. I am of opinion on this point that according to the present state of the law in England, and apart from the provisions of the Common Law Procedure Act, 1854, the right of persons duly elected Directors of a company incorporated under the Joint-Stock Companies Acts to exercise the office and functions of directors would, if interfered with on the part of the company acting through the other directors or officers of the company, be enforceable by mandamus".

It was submitted by Mr. Mahmood Ali Qasuri, learned counsel for the respondents, that the decision in Maqbool Elahi's case, as well as the two precedent English cases, would no longer be applicable in view of the specific provisions contained in Article 98 of the 1 962 Constitution and the corresponding Articles in the Interim Constitution of 1972 as well as the permanent Constitution of 1973 for the reason that these Articles clearly provide that writs in the nature of mandamus or prohibition can issue only if the person concerned is performing public functions in connection with the affairs of the Federation or a Province or a local authority, which is not the case with a joint-stock company.

It was further contended by him that the decision of this Court in Maqbool Elahi's case was clearly influenced by the fact that the joint-stock Company in question was dealing in controlled items and stocks of iron and steel, and at least three of its directors were to be nominated by the Central Government.

The first part of Mr. Qasuri s submission is indeed correct, and we have in fact already accepted it while considering the scope of clauses (2) (a)(r) and (2)(a)(fl) of Article 201 of the Interim Constitution. The pro visions contained in these two clauses are differently worded from the language employed in Article 170 of the 1956 Constitution, under which Maqbool Elahi's case fell to be decided. Under that Article the power given to the High Court was "to issue to any person or authority including in appropriate cases any Government, directions, orders, of writs, including writs in the nature of habeas corpus, mandumus, pro hibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part II and for any other purpose". There was no limitation that writs in the nature of mandamus, prohibition or certiorari? could issue only in respect of acts, actions and proceedings of persons performing functions in connection with the affairs of the Federation, a Province or a local authority. Such being the case, it does appear that a writ in the nature of mandamus could not be issued by the High Court to restore to office a Director of a joint-stock company. However, the relevance of the three cases, mentioned in the preceding paragraphs, lies in the fact that they regard the office of the Director of a joint-stock company as a public office,

i.e., an office in which shareholders, as members of the public, are vitally interested, and it involves the performance of a public duty.

Mr. Qasuri does not appear to us to be right in thinking that the conclusion of this Court, in Maqbool Elahi's case, as regards the public nature of the office of the Directors of the joint-stock company, was in any manner influenced by the peculiar circumstances of the company concerned, namely, the commodities in which it was dealing and the provision for the nomination of a certain number of its Directors by the Central Government. We have already reproduced at some length the reasons which prevailed with the Court, and it will be seen that they proceed on general considerations about the nature of the duties performed by the Directors of a joint-stock company, independently of the peculiar situation of the company involved in that case.

In Azizur Rehman Chaudhry v. M. Nasiruddin (P L D 1965 S C 236) the question of the desirability of issuing a writ in the nature of quo warranto under Article 98 of the 1952 Constitution, arose in regard to the office of the directors of a public limited company. Although the writ was refused on account of the conduct and motives of the relator, but it was, nevertheless, assumed that in a suitable case a writ of quo warranto would lie in respect of the office of director of a company. This becomes clear from the observations appearing on the last page of the report, namely, "we arc also in agree ment with the High Court that the circumstance that the appellant was neither qualified to be elected a Director nor had at any stage offered himself for election as such Director nor was even present at the meeting summoned for the election of the Board of Directors, disentitles him to seek the writ of quo warranto which was not a writ of course. The Court from which the writ was sought was entitled to enquire into the conduct and motives of the application for such a writ and if the information was considered to be merely of a vexatious nature, the Court was entitled to refuse to exercise its discretion in favour of the applicant. Thus, where the issuance of the writ would disturb the peaceful and orderly functioning of corporation, the Court is entitled to refuse the writ on the ground that to do so would be merely vexatious, particularly, where its consequence would be, as in the present case, to place the company back in the hands of those who were mismanaging its affairs and illegally removing its assets to another country".

In the light of the foregoing discussion, the position of a public limited company, in relation to the applicability of the various clauses of Article 201 of the Interim Constitution, or Article l99 of the permanent Constitution of 1973, may be summed up by saying that while it cannot ordinarily be regarded as a person performing functions in connection with the affairs of the Federation, a Province or a local authority simple for the reason that its functioning is regulated by a statute; yet nevertheless the offices held by its Directors and its Chief Executive, which term would include a Managing Director, must be regarded as public offices inasmuch as they involve the performance of public duties which are of the greatest importance to the public interest in the field of the operation of public joint stock companies under the Company Law. As a consequence, although a joint-stock company may not be amenable to the issuance of a writ under clauses (2)(a)(i) and (2)(a)(ii) of Article 201 of the Interim Constitution, but its Directors and the Chief Executive are within the purview of clause (2)(b)(ii) of the said Article which permits the High Court to issue a writ in the nature of quo warranto, requiring a person within its territorial jurisdiction holding or purporting to holy a public office to show under what authority of law he claims to hold that office.

It is also clear that, while acting under clause (2)(6)(ii), the High Court would only grant a declaration as to the authority of the respondent hold the office in question, but it could not grant a mandamus to restore o re-instate the applicant to that office in case it comes to the conclusion that the incumbent had no authority to hold the same. The High Court would in such a case only declare the office to be vacant, leaving the

rightful claimant, if any, to take whatever steps may be open to him to occupy the same.

Besides the general considerations mentioned in the preceding para. graphs, there are additional factors obtaining under the Companies Order, 1972, which make it clear that the offices of the Chief Executive and the Directors of public joint-stock companies must be regarded as public and statutory offices. The salient features of this Order have already been briefly indicated by us in an earlier part of this judgment. It will be re-called that this Order provides for the termination of all Managing Agencies, and lays down the procedure for the appointment of the Chief Executive and the fresh election of the Directors of joint-stock companies, besides prescribing the tenure of their office and a procedure for their removal etc. It seems to us, therefore, that, since the promulgation of the Companies Order, 1972, the public character of these offices stand emphasized by the greater degree of statutory control imposed by the State on the holders of these offices in the public interest. There can, thus be no doubt whatsoever regarding the amenability of these offices to the jurisdiction enjoyed by the High Court under clause (2) (b) (ii) of Article 201 of the Interim Constitution.

We now proceed to consider the question whether the High Court was right In refusing relief on the ground that the appellants had already filed a civil suit on the same cause of action. Learned counsel for the appellant is right in pointing out that the learned Judges in the High Court over looked the fact that in the civil suit the legality of the proceedings of the meeting held on the 15th of June 1972 was not under challenge, as the suit had been filed before the date of this meeting, with the object of restraining the defendants from holding the same. The suit, however, did not prove effective, as temporary injunction was refused by the trial Court only one day before the meeting was scheduled to be held. It would, therefore, appear that, on the factual plane, the suit filed by the appellants could not be regarded as an adequate alternative remedy.

Even otherwise, on principle, the weight of authority is in favour of dealing with such matters in the exercise of the writ jurisdiction of the High Court rather than by way of civil suits. In the case of Maqbool Elahi, to which we have already referred extensively in another context, it was observed that "If however the case of excluded Directors rested on a priori considerations, such as those which have been set out above, a Court faced with the matter as res integra might well consider with the utmost seriousness whether or not the agency of the high prerogative writ should be imported into such a matter. For, there are other means available, although one of them, that is the remedy by suit is generally very lengthy and laborious, and the other, namely, by reference to shareholders is apt to lead to unsatisfactory results through the spread of dissension and disagreement from the body of Directors into the larger body of they shareholders.

In Mehboob Ali Malik v. Province of West Pakistan (P L D 1963 Lah. 575) a Full Bench of five Judges of the High Court of West Pakistan was constituted to consider the scope and extent of the phrase "no other adequate remedy" as used in Article 98 of the 1962 Constitution. The learned Judges came to the conclusion that the "adequacy of an alternative remedy is to be judged in relation to the requisite relief. If the relief available through the alternative remedy, in its nature or extent is not what is necessary to give the requisite relief, the alternative remedy is not an "other adequate remedy" within the meaning of Article 98. If the relief available through the alternative remedy, in its nature and extent, is what is necessary to give the requisite relief, the adequacy of the alternative remedy must further be judged with reference to a comparison of the speed, expense or convenience of obtaining that relief through the alternative remedy, with the speed, expense or convenience of obtaining it under Article 98. But in making this comparison those, factors must not be taken into account which would themselves alter if the remedy under Article 98 were used as a substitute for the other remedy . . . . ."

This view of the Full Bench of the High Court came up for examination by this Court in Anjuman-e-Ahmadiya v. D. C, Sargodha (P L D 1966 S C 639) and it was generally approved, but the Court's own view was formulated as under:--

"When the relief sought for is by its nature one which lends itself to be effectively remedied by orders of the nature contemplated in paragraphs (a), (b) and (c) of sub-Article (2) of Article 98, then the intention of the Constitution appears to be that the remedy grafted by the Constitution should be made available to the citizen unless the Court is satisfied that other adequate remedy is provided by law. The other adequate remedies provided by law would, in the ordinary circumstances, have reference to the remedies provided by the parti cular statute itself which has created the right or obligation and not a general remedy at law, as for example by a suit. On the other hand, if the remedy sought for is in substance a remedy which is available under the ordinary law then a suit and not the extraordinary remedy under Article 98 should be the appropriate remedy, for, the remedy provided by this Article is not intended to be a substitute for the ordinary forms of legal action. But where this is not the case the remedy by way of a suit can hardly be considered to be an adequate alternative remedy. A suit is by no means as inexpensive or speedy or beneficial a remedy as the remedy provided by this Article."

Nothing was said at the Bar in derogation of the principles embodied in the preceding observations. It would appear, therefore, that the learned Judges in the High Court were not right in refusing relief merely on the ground that the appellants bad already filed a civil suit, especially when, on the factual plane, the suit had failed to provide an adequate alternative remedy to the appellants.

Although we have found that a writ in the nature of quo warranto under clause (2) (b) (ii) of Article 2201 of the Interim Constitution could issue in this case, and the High Court was in error in refusing relief simply on the ground that the appellants had already tiled a civil suit, the question still remains whether, in the facts and circumstances of this case, we should make any operative order in favour of the appellants.

It was submitted by the learned counsel for the respondents that we ought to refrain from doing so for the reason that in the High Court the appellants had sought relief only under clauses (2) (al (i) and (2) (a) (ii) of Article 201, and not under clause (2) (b) (ii) thereof, and we should not, therefore, allow the appellants to ask for a writ of quo warranto in the present appeal. It was next contended that in any case the High Court having dismissed the appellants' Constitution petition to limine, no inquiry was undertaken, nor any findings recorded, on the facts alleged in the petition, and we should not ourselves undertake any such inquiry into disputed questions of fact, which would be necessary for the purpose of passing an operative order. It was further submitted by Mr. Mahmood Ali Qasuri that the tenure of three years pertaining to the offices claimed by the appellants, and at present held by the respondents, was about to expire, and for that reason also this was not a fit case for interference by this Court at this stage. Finally, it was contended that the Court should not interfere with the internal management of the Company, nor should it issue a writ which could easily be nullified by a resolution of the Board of Directors removing appellant Salahuddin Khan from the office of Chief Executive, as after all he was only wanting to enforce a contract of personal service with the Company.

It is indeed true that in the High Court the relief claimed by the appellants was so worded as to fall under clauses (2) (a) (i) and (2) (a) (ii) of Article 201 of interim Constitution, and attention was not directed to the provisions contained in clause (2) (b) (ii) thereof, but this failure on the part of the appellants did not relieve the High Court of its constitutions duty to afford relief where it was lawfully due. The appellants had invoked the extraordinary jurisdiction of the High Court, and it mattered little whether the relic f claimed by them fell under one clause or the other of the relevant

provision of the Constitution, To deny relief to the citizen on such a hyper-technical ground would, in our view, amount to a negation of the beneficial jurisdiction conferred by the Constitution on the High Court in the larger public interest. In any case, the question was indeed one of law touching the interpretation of the Constitution and permission to raise such a question has invariably been accorded by this Court even though the matter was not agitated in the Courts below. We consider, therefore, that relief cannot be refused to the appellants only on the ground that they did not invoke clause (2) (b) (ii) of Article 201 in the High Court.

As a general rule of practice, the superior Courts have imposed certain limitations upon themselves in the matter of the exercise of their extra ordinary jurisdiction under the Constitution, and one such limitation is that they would not ordinarily undertake an inquiry into disputed questions of fact. Even if, therefore, the Peshawar High Court had not dismissed the appellant's Constitution petition in limine, it would not have undertaken an inquiry into disputed facts, and would have proceeded to dispose of the matter in the light of admitted or proved facts, appearing on the face of the record. These facts being easily ascertainable from the material and documents placed on the record by the contending parties, we see no insuperable difficulty in examining the same for the purpose of deciding whether an operative order would be justified in the facts and circumstances of the case.

As regards the next submission made on behalf of the respondents, namely, that the tenure of the offices in dispute is nearing its expiry, we consider that this is not a decisive factor for the exercise of the jurisdiction of the Court. The dispute between the parries has involved substantial questions of law regarding the operation of the Companies Order, 1972, and the constitutional jurisdiction of the High Court in matters relating to joint-stock companies. 1n these circumstances, especially when the appellants were not responsible fur the time taken by the Courts to resolve these controversies, it seems appropriate that final orders should be made by this Court. irrespective of the approaching expiry of the tenure of the offices in question. In any case, the effect of the alleged illegal interruption by the respondents would also need examination.

The argument that the Court should not interfere with the internal management of the company or should not issue a writ which can easily be nullified by the Board of Directors, is entirely misconceived, We have already seen that the offices of Director or Chief Executive o a joint-stock company are public offices, and for that reason they are amenable to the jurisdiction of the High Court under Article 201 of the Interim Constitution. That being so, any direction or declaration regarding the lawful authority of the incumbent of such an office, or the reinstate ment of a duly elected or appointed Director or Chief Executive would not amount to interference with the internal management, but would be on the contrary, a step for the advancement of the public interest by ensuring that the Company is managed according to law by those who are legitimately entitled to do so. The office of Director or of the Chief Executive, who is also deemed to be a Director if not otherwise a Director, being a public office, is not to be regarded as being merely employment under the Company, and, therefore, in such a case the Court is not seeking to enforce s contract of personal service. It seems to us, therefore, that an operative order in favour of the appellants, or against the respondents, cannot be refused on the basis of these objections, if it is otherwise warranted.

Turning now to the merits of the case, it will be recalled that the respondent, Taj Mohammad Khanzada, was appointed as the new Managing Director under the Companies Order at a meeting of the Board of Directors held on the 24th of January 1972 which appointment was later annulled and rescinded at the meeting of the Board held on the 15th of April j 972, attended by the nine Directors who had been elected unopposed at the annual general meeting of the shareholders held on the 31st of March 1972. At this subsequent meeting, according to the minutes, placed on the record, a

compromise formula was evolved whereby the appellant Salahuddin Khan was appointed as the Chief Executive and the respondent Taj Mohammad Khanzada was appointed as Resident Director. These appointments were in turn annulled and rescinded at the extraordinary general meeting of the shareholders held on the 15th of June 1972, and respondent Khanzada was then unanimously appointed as the Chief Executive of the Company by the general body of shareholders.

It was contended by Mr. Sharifuddin Pirzada, learned counsel for the appellants, that the appointment of respondent Khanzada as Managing Director of the Company, at the meeting of the Board of Directors held on the 24th of January 1972 was illegal and invalid for several reasons, namely:-

(a) That by being appointed as a Managing Director under Article 139 of the Articles of Association of the Company with effect from 23-4-1950, Khanzada had ceased to be a Director as such, and was never re-elected to that office until the promulgation of the Companies Order, with the consequence that he was only deemed to be a Director in his capacity as Managing Director, which appointment came to an end on the promulgation of the Companies Order on the 15th of January 1972, and, therefore, he could not participate in the meeting of the Board of Directors held on the 24th of January 1972;

(b) That in any case, even if Khanzada was a Director and competent to take part in the meeting of the Board of Directors, he could not preside at the time his own appointment as Managing Director was under consideration, as this would be in violation of the principles of natural justice;

(c) That the minimum number of Directors specified for a public limited company being seven under Article 8 of the Companies Order. Khanzada's appointment as Managing Director was invalid as it was made by only five Directors, including himself, the seventh Director, Khan Sadullah Khan, having been appointed at the meeting after the Board had decided on Khanzada's appointment;

(d) That Khanzada's appointment as Managing Director was in contra vention of clause (2) of Article 4 of the Companies Order which contemplates the appointment of a Chief Executive and not of a Managing Director; and

(e) That by his subsequent conduct, namely, participation in the meeting of the Board of Directors held on the 15th of April 1972 and getting himself appointed as Resident Director, nod later as the Chief Executive at a meeting held on the 15th of June 1972, Khanzada had waived all claims to the appointment made at the meeting of the 24th of January 1972, and he was now estopped from claiming the office by virtue of the proceedings of this meeting.

These contentions have been controverted by Mr. Mahmood Ali Qasuri, who has argued that Khanzada had continued to be a Director without being

subject to the rule of rotation in terms of Regulation 72 contained in Table A of the First Schedule to the Companies Act, and he could, therefore, legitimately take part in the meeting of the Board of Directors, even though he had ceased to be a Managing Director in view of the provisions of the Companies Order; and that he was not debarred from presiding at the meeting at the time of the consideration of the question of his own appointment as Managing Director, as he was not required to act as a judge in his own cause. Mr. Qasuri has further submitted that the validity of the proceedings of this meeting cannot be questioned simply on the ground that there was a vacancy on the Board of Directors, or that any person, not qualified to act as a Director, participated in the said meeting.

We consider that it is not necessary for us to examine these contentions in view of the subsequent developments that took place at the annual general meeting of the shareholders held on the 31st of March 1972, and at the meeting of the Board of Directors held on the 15th of April 1972. If the decisions taken at these two meetings were validly taken in accordance with law, then the appointment of respondent Khanzada as Managing Director of the Company made at the meeting of the Board of Directors held on the 24th of January 1972 would stand superseded and annulled.

It is common ground between the parties that at the meeting of the Board of Directors held on the 10th of March 1972, the number of Directors of the Company was fixed at nine. It is also not disputed that the ordinary annual general meeting of the shareholders of the Company was held on 31-3-1972 under the Chairmanship of respondent Taj Mohammad Khanzada, who brought to the notice of the shareholders that nine Directors had to be elected; that the seven existing Directors had offered themselves for re-election and that for the two extra vacancies only two nomination papers of the appellant Salahuddin Khan and respondent No. 10, Mohammad Yaqoob Khan, had been received. It is also recorded in the minutes, and not disputed by the respondents, that all the nine candidates were then unanimously declared elected, without resort to the voting procedure prescribed under Article 10 of the Companies Order.

In the suit filed by respondent Khanzada on 12-5-1972, which was later withdrawn on 3 t-5-1972 without the permission of the Court, the main objection to the unanimous election of the nine Directors of the company, Including Khanzada himself, at the annual general meeting of 31-3-1972, was that it stood vitiated for the reason that the voting procedure prescribed under Article 10 of the Companies Order had not been followed. The same objection was reiterated by the Chairman of the extraordinary general meeting of the shareholders held on 15-L-1912 on the requisition of ten shareholders of the Company. During the course of arguments before us, the point was elaborated at some length by Mr. Mahmood Ali Qasuri. He submitted that the underlying object of the Companies Order, 1972, was to transfer authority over the administration of the Company from Managing Agents and Managing Directors back to the shareholders and the Directors of the Company, and that the voting procedure prescribed in Article 10 of the Order was geared to ensure representation of minority interests, as stated in the preamble of the Order. He contended that polling under Article 10 must be held even if the number of candidates was equal to the number of vacancies, as otherwise the provisions contained in Article 12 of the Order regarding the removal of Directors would become impossible of operation and implementation.

In order to appreciate the argument put forward on behalf of the respondents. It is necessary to reproduce here, in full, Articles 10, 11 and 12 of the Companies Order, 1972:-

"10. Voting for election of directors.-The Directors of a company shall fix the number of Directors of the company and the Directors shall be elected by the members of the company in general meeting in the following manner, namely:-

(a) a member shall have such number of votes as is equal to the product of the number of voting shares held by him and the number of Directors to be elected;

(b) a member may give all his votes to a single candidate or divide them between more than one of the candidates in such manner as he may choose; and

(c) the candidate who gets the highest number of votes shall be declared elected as Director and then the candidate who gets the next highest number of votes shall be so declared and so on until the total number of Directors to be elected has been so elected.

11. Term of office of Directors.-(1) A Director including the Chief Executive, shall hold office for a period of three years unless he earlier resigns, becomes disqualified for being a Director or otherwise ceases to hold office.

(2) Any casual vacancy occurring among the Directors may be filled up by the Directors, and the person so appointed shall hold office for the remainder of the term of the Director in whose place he is appointed.

12. Removal of Director, etc.-A resolution for removing a Director elected in the manner provided for in Article 10, or for reducing the number of Directors, shall not be deemed to have been passed if the number of votes against it is equal to, or exceeds, the number of votes that would have been necessary for the election of a Director at the immediately preceding annual election of Directors in the manner aforesaid."

According to its accepted connotation and usage the word `election' means the act of choosing or selecting one or more from a greater number of persons, things, courses or rights; the choice of an alternative. All voting procedures are intended to enable the voters or electors to make the choice or selection of the requisite number of persons from among a larger number of candidates offering themselves for the office in question. Article 10 of the Companies Order is also intended for precisely the same purpose, as is clear from clause (c) thereof, namely, "the candidate who gets the highest number of votes shall be declared elected as Director and then the candidate who gets the next highest number of votes shall be so declared and so on until the total number of Directors to be elected has been so elected." It is clear, therefore, that, as in all other elections, resort to voting in accordance with the procedure embodied in Article 10, would become necessary only if the number of candidates is larger than the number of Directors fixed for the company. If the number of candidates is equal to, or less than, the number of vacancies, no question would arise of resorting to polling or voting, whatever the procedure prescribed for this purpose. There is nothing at all in Article 10 to suggest that voting must be held even if there is no need for it.

Now, the question is whether this fundamental and basic principle stands altered or abrogated in view of the special procedure contained in Article 12 of the Companies Order for the removal of Directors. It is indeed one of the principles of interpretation that the various provisions of a statute should be harmoniously construed so that none is rendered nugatory, but the principle cannot be stretched to placing an entirely artificial and un -tenable interpretation on one provision, so that another provision may be saved. We cannot read into Article 10 a mandatory requirement for voting where none is called for, simply for the reason that Article 12 may other wise possibly become difficult to operate.

In any case we find that the apprehension expressed by Mr. Mahmood Ali Qasuri in this behalf is altogether unfounded, as it is not supported by the language of Article 12. The Article is couched in negative terms; it does not speak of the actual number of votes polled by any particular Director, but only mentions "the number of votes that would have been necessary for election of a Director at the immediately preceding annual election of Directors." This is a theoretical calculation, capable of being worked out on the basis of the shareholders attending the meeting and the number of votes held by them.

That Article l2 does not refer to the actual number of votes polled, is also borne out by reference to clause (2) of Article 11 which provides that "any casual vacancy occurring among the Directors may be filled up by the Directors, and the person so appointed shall hold office for the remainder of the term of the Director in whose place he is appointed." It is clear that a Director appointed under this clause has not been elected by the voting procedure prescribed under Article 10, and yet it may become necessary to remove him. If Mr. Qasuri's argument is correct, namely, that without resort to the voting procedure under Article 10, the procedure for removal prescribed under Article

12 becomes inoperative, then it is clear that a Director appointed to a casual vacancy under clause (2) of Article 1 l cannot be removed at all. We are quite clear that such an interpretation is far-fetched and untenable. Article 12 prescribed a formula for the re moval of Directors which can be enforced and implemented without there having been actual voting at the last annual election of Directors in accord ance with the multiple voting procedure prescribed under Article 10. Resort to that procedure becomes necessary only if the number of candidates is larger than the number of vacancies.

On this view of the matter, we have no hesitation in holding that the shareholders present at the annual general meeting held on the 31st of March 1972 acted in accordance with law in not resorting to actual voting or polling under Article 10, as there was no need for it. All the nine candidates must, therefore, be regarded as having been duly elected to the office of Director, and thus entitled to serve for the tenure prescribed under Article 11 of the Order. At this stage, we are not called upon to decide whether they were, or not, subject to rotation in accordance with the Articles of Association of the Company.

We now proceed to consider the proceedings taken at the meeting of the Board of Directors held on the 15th of April 1971. We have already stated that this meeting annulled the resolution of the 24th of January 1972 under which respondent Taj Mohammed Khanzada had been appointed as a Managing Director for a period of three years. Among other matters, the Board of Directors took note of the fact that the previous resolution was passed "in the presence of Mr. Taj Mohammad Khanzada, and when he presided over the meeting." Having annulled and rescinded the reso lution of the 24th of January 1972, the Board of Directors took considerable time in order to arrive at a unanimous decision in the matter of the appoint ment of the Chief Executive of the Company. The rival claims of the appellant Salahuddin Khan and respondent Taj Mohammad Khanzada were ultimately settled by compromise formula under which the appellant was appointed as the Chief Executive and respondent Khanzada was appointed as the Resident Director. An Administration Committee was also appointed to fix their duties, responsibilities and obligations etc., and to determine their terms and conditions.

The fact that a meeting of the nine Directors elected by the shareholders on the 31st of March 1972 was indeed held on the 15th of April 1972 is not disputed by the respondents, but it was vehemently contended by Mr. Mahmood Ali Qasuri that the decisions attributed to this meeting were in fact not taken, and that the minutes of the meeting were fabricated by one Gohar Badahah who was then acting as the Secretary of the Company. According to the learned counsel, the meeting had broken up in chaos without taking any decisions at all, that the minutes had not been con firmed so far, and that they had been repudiated by five of the directors, who attended that meeting, and this fact had been communicated by the Secretary of the Company to the Controller of Capital Issues. It was further submitted on behalf of the respondents that, in any case, the decisions taken at this meeting of the Board of Directors were in violation of the provisions of the Presidential Order, for the reason that by way of a com promise three persons had been appointed as Chief Executives, namely, Mr. Fida Mohammad Khan as Chairman of the Board of Directors, appel lant Salahuddin as the Chief Executive, and respondent Khanzada as the Resident Director on the same salary and privileges as he was enjoying previously as Managing Director of the Company. It vas next contended that a further complication was created by superimposing an Administra tion Committee on the Chief Executive and the Resident Director, thus showing that in fact no valid appointment of the Chief Executive had at all been made at this meeting by the Board of Directors. Learned counsel spent considerable time in arguing that there had been some fabrication of the records by the previous Secretary, Gohar Badshah, in regard to a meeting of the Administration Committee alleged to have been held on 18-4-1912. He, however, conceded that a meeting of the Administration Committee did take place on 16-4-1972, that is, on the day following the meeting of the Board of Directors. Finally, it was asserted that the pro ceedings of this meeting

also stood vitiated for want of circulation of a formal agenda to the Directors in advance. The object of Mr. Mahmood Ali Qasuri in raising all these questions was to show that, even if the nine Directors of the company had been duly elected at the annual general meeting held on the 31st of March 1972, there was no authentic and un disputed record of the decisions taken by them as the Board of Directors at their meeting held on the 15th of April 1972, and, therefore, this Court ought not to pass any order on the basis of the proceedings of this meeting.

After giving our anxious consideration to the large number of objections urged try Mr. Mahmood Ali Qasuri, we are of the view that they do not affect the validity or authenticity of the decisions taken at this meeting. We- have already mentioned that the factum of the meeting is apt disputed by the respondents. In the suit filed by respondent Taj Mohammad Khanzada and his nephew Zaib Alam Khanzada on the 12th of May 1972, in the Court of the Senior Civil Judge at Mardan, the fact that appellant Salahuddin Khan had been appointed as Managing Director at a meeting of the Board of Directors held on 15-4-1972 was conceded, but the legality of this appointment was challenged on the ground that it had been made by the nine illegally elected Directors of the company. Mr. Qasuri was not able to show that in that suit respondent Khanzada had expressed any doubt regarding the authenticity of the minutes of this meeting of the Board of Directors, nor was any grievance made at that time of any chaos or confusion created by the appellants or of any prejudice having been caused by want of a formal agenda. It is clear, therefore, that the objections raised by the five Directors, belonging to the opposite camp, regarding the genuineness of the minutes of this meeting were in the nature of an afterthought.

Another important indication as to the decisions taken by the Board of Directors on 15-4-1972 is furnished by the admitted fact that a meeting of the Administration Committee, consisting of Khan Fida Mohammad Khan, Khan Sadullah Khan and Khan Sairab Hayat Khan, was held on the 16th of April 1972 to "consider the powers of the Chief Executive and the Resident Director in accordance with Board Resolution No. 3 dated 15-4-1972 and allocation of duties". This meeting could not have been held and the question of a location of duties between the Chief Executive and the Resident Director could not have arisen, if the relevant decisions had not already been taken by the Board of Directors at its meeting held on the 15th of April 1972. This position is not altered in any manner by the controversy raised by the respondents regarding the next meeting of the Administration Committee said to have been held on the 18th of April 1972.

We are, therefore, fully satisfied, on the basis of the admitted facts available on the record that a meeting of the Board of Directors, consisting of nine Directors duly elected by the shareholders on the 31st of March 1972, was indeed held, as asserted by the appellants, and that at this meeting the appellant Salahuddin was appointed as the Chief Executive of the Company and the respondent Khanzada was appointed as the Resident Director. The fact that certain formalities, by way of obtaining the appro val of the Controller of Capital Issues etc., the allocation of duties, between the two executives, and the fixation of their terms and conditions of service, had yet to be completed would not invalidate these appointments. These formalities had of necessity to be completed after the Board of Directors had taken the necessary decisions.

From what we have said above, it follows that at the annual general meeting of the shareholders held on 31-3-1972, nine Directors were elected, and that these Directors, meeting as the Board of Directors on the 15th of April 1972, annulled and rescinded the appointment of Taj Mohammad Kbanzada as the Managing Director of the Company and instead appoint ed the appellant Salahuddin Khan as the Chief Executive and respondent Taj Mohammad Khanzada as the Resident Director of the Company. The respondents as well as the appellants were present at both these meetings and participated in the deliberations thereof. It was in pursuance of these decisions that the Administration Committee, consisting of three Directors, met on the 16th of April 1972

to consider the question of the allocation of duties etc. between the two office holders. 'The respondents, particularly respondent Khanzada, were bound by these decisions and could not unilaterally repudiate them, as the two important appointments were made as a result of a mutual compromise between the opposing factions of the Directors of the company. The question now is about the effect of the proceedings taken at the extraordinary meeting of the shareholders held on the 15th of June 1972 on the requisition of certain shareholders.

Mr. Sharifuddin Pirzada, learned counsel for the appellants, contended that the meeting was not validly convened as a copy of the requisition sent by the shareholders was riot placed before the appellant Salahuddin Khan who was also a Director of the company; that a notice of the meeting of the Board of Directors convened for the purpose of considering the requisition and fixing the date, time and place of the general body meeting, was not sent to all the Directors as the appellants were deliberately left out ; and that the appellants having been duly elected, or appointed for the statutory tenure mentioned in the Companies Order, their election/appointment could not be annulled on grounds completely untenable in law, nor could they be removed without specifically following the procedure prescribed under Article 12 of the Order.

On behalf of the respondents, Mr. Mahmood Ali Qasuri stated that tile requisition from tile shareholders for convening an extraordinary general meeting was received by toe Company on 22-5-1972, that the requisition was circulated to all the Directors, including the appellants, that a draft resolution for convening the meeting on 15-6-72 was also sent to all the Directors, and that the notice of the general meting itself was then circulated on 27-5-72. He added that five out of the nine Directors indicated their agreement to the proposed date, where is the remaining four objected to the holding of the meeting on the ground that the matter was already sub judice. Learned counsel submitted that in these circumstances it is not correct to say that the meeting was not convened in accordance with the rules. He further contended that in fact the nine directors and the Chief Executive were removed by the extraordinary general meeting held on the 15th of June 1972, which the meeting was competent to do in spite of the tenure of three years fixed by the Companies Order.

From a perusal of the various notices placed on the record, we are inclined to the view that it is not possible to accept Mr. Sharifuddin Pirzada's contention that the meeting of the 15th of June 1972, was not properly convened in accordance with the rules. However, learned counsel for the appellants is on firm ground when he contends that the Chairman of this meeting completely misdirected himself and the shareholders present by explaining to them that the election of the nine Directors of the Company at the annual general meeting held on 31-3-1972, was vitiated for the reason that no polling had taken place. We have already examined the relevant pro visions of the Presidential Order at some length, and have come to the conclu sion that the number of candidates being equal to the number of vacancies of Directors of the Company, there was no question of resorting to the poll ing or voting procedure prescribed under Article 10 of the Companies Order, and that there was no infirmity attaching to their election. It is, therefore, clear that the view put forward before the shareholders by the Chairman of this meeting was completely erroneous and untenable in law, and any resolution proceeding on this basis would be similarly untenable and invalid.

A perusal of the minutes of this meeting shows that the shareholders did not remove the Directors and the Chief Executive previously appointed, but resolved to declare null and void the previous decisions on account of the supposed legal informity vitiating those decisions, as explained by the Chairman of the meeting. This declaration by the shareholders clearly proceeded on a miss-interpretation of the relevant provisions of the Companies Order and cannot be allowed to stand. As a consequence, the further action by the shareholders in proceeding to elect new Directors in place of those who had already been validly elected un 3 -3-1972, was null and void, as the previous Directors had not vacated their offices, nor had they been

removed in accordance with the prescribed procedure. On the same reasoning, the decision taken by these new Directors, at a meeting held by them on the same date after the general body meeting, to appoint respondent Taj Muhammad Khanzada as the Chief Executive for a term of three years was also without lawful authority.

The final positron which, therefore, emerges to this case is that while the High Court was right to thinking that tire Frontier Sugar Mills and Distillery Ltd., Takht Bhai, was not a person performing functions to con nection with the affairs of the Federation, a Province or a local authority, and, therefore, not amenable to the jurisdiction of the High Court under clauses (2)(a)(i) and (2)(a)(ii) of Article 201 of the interim Constitution, yet it was in error in not adverting to the power available to it under clause (2)(b)(ii) of the said Article to issue a writ in the nature of quo warranto requiring the respondents to show under what authority they were holding the offices of Chief Executive and Director of the Company respec tively, as these offices are public offices, as distinguished from ordinary employment or service. However, while granting a declaration under clause (2)(b)(ii), referred to above the High Court would not be in a position to order the re-instatement or restoration to office of the rightful claimant.

On the merits of the case, we have found that the three appellants, namely, Salahuddin Khan, Sairab Hayat Khan and Dost Muhammad Khan Sherpao, as well as respondent No. 2 (Taj Muhammad Khanzasa), 7 (Sadullah Khan), 8 (Capt. Asad Khanzada), 9 (Begum Shaukat Khanzada), 10 (Muhammad Ayoob Khan) and the late Fida Muhammad Khan were validly elected as Directors of the Company at the annual general meeting of the shareholders held on 31-3-1972; that they validly appointed appel lant Salahuddin Khan as the Chief Executive and the respondent Taj Muhammad Khanzada as the Resident Director, under a compromise formula, after deliberately and consciously setting aside respondent Khanzada's earlier appointment as the Managing Director, as made by the previous Directors on 24-1-1972 ; that respondent Khanzada was a consent ing party to these new appointments and was bound by the same. We have also found that the nine Directors having been validly elected, the extraordinary general meeting of the shareholders requisitioned for the 15th of June 1972, acted without lawful authority in declaring null and void the election of these nine Directors as well as the appointment of appellant Salah uddin Khan as the Chief Executive, This meeting similarly acted illegally in proceeding to elect nine new directors in place of those who had been validly elected on 31-3-1972. We have further held that the newly constituted Board of Directors, which met on 15-6-72, bad no lawful authority to appoint respondent Taj Muhammad Khanzada as the new chief Executive in place of appellant Salahuddin Khan. On this view of the matter, it is clear that all actions taken at the meeting of the 15th of June 1972, and subsequent thereto, were without lawful authority and of no legal effect, and we declare accordingly.

The effect of this declaration is that the appellants alongwith respondents Nos. 2, 7, 8, 9 and 10 remain the validly elected Directors of the Company in pursuance of the election held on 31-3-1912, and that appellant Salahuddin is the validly appointed Chief Executive of the Company, on the basis of the appointment made by the Board of Directors on 15-4-72; and that respondent Taj Muhammad Khanzada has no lawful authority to hold the office of the Chief Executive of the Company, nor have respondents Nos. 2 to 10 any lawful authority to hold the office of the Directors of the Company in pursuance of the resolutions of the extra ordinary general meeting of the shareholders held on the 15th of June 1972.

We may now consider the submission made on behalf of the appellants that as their tenure of office was illegally interrupted, they are entitled to serve for the un-expired portion of their term, unless they sooner cease to hold office or are removed in accordance with law. We find that in the case of Maqbool Blahs, already referred to in another context, the Court ordered the restoration of the appellants for the un-expired portion of their terms on the ground that the smooth working of the company under the

law and the Articles had been interrupted with the ousting of those who were law fully entitled to function as directors. This direction was made in spite of a contention from the opposite side to the effect that the appellants before the Court were subject to the principle of rotation and their tenures were to come to an end in the ordinary course.

We are of the view that these considerations apply with full force in the case before us. As we have found the appellants to be lawfully entitled to the offices claimed by them, and we have also found that the respondents have illegally usurped those offices, it follows that both the parties stand restored to the portion obtaining immediately before the meeting of the 15th of June 1972, in accordance with the decisions taken at the meeting of the shareholders held on the 31st of March 1972, and the meeting of the Board of Directors held on 15 4-1972. They are entitled to hold their respective offices for the un-expired portions of their terms under Article 11 of the Presidential Order of 1972, unless they are sooner removed or other wise cease to hold office in accordance with law. The period for which their tenure of office has been illegally interrupted shall not be counted.

The Company shall now take whatever formal action is needed to give effect to the decisions of the two meetings in question.

For the foregoing reasons Civil Appeal No. 7-P of 1974 is accepted in the terms indicated in the preceding paragraphs, but in view of the com plicated legal questions involved, we leave the parties to bear their own costs.

In view of the acceptance of Civil Appeal No. 7-P of 1974, Civil Appeal No. 8-P of 1974 has become infructuous, and is dismissed as such, with no order as to casts.

K. B A. Appeal accepted.

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