

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-236 of 2023

(Javed Iqbal Burqi v. Federation of Pakistan and 06 others)

Mr. Muhammad Vawda, advocate for the petitioner

Mr. Haider Waheed, advocate for respondent No.6

Mr. Yasir Ahmed Shah, Assistant Attorney General

Date of hearing
& decision : 13.03.2023.

ORDER

Through this writ of quo warranto, the petitioner has prayed as under:

“(a) Declare that the appointment of the Respondent No. 6 as Commissioner SECP, is illegal, unconstitutional, mala fide, and void ab initio;

(b) Declare that Respondent No. 6 is liable to be disqualified as Commissioner, SECP, under Section 18(e) of the SECP Act in light of her abuse of power and failure to disclose conflict of interest;

(c) Declare that the failure of the Respondents to proceed with the Petitioner`s Complaint dated: 04.01.2023 is illegal, unconstitutional, and mala fide;

(d) Direct that an inquiry be conducted into the appointment of, and abuse of powers by, Respondent No. 6 with regards to her tenure as Commissioner, SECP, under Section 19(2) of the SECP Act;

(e) Direct the Respondents to decide the Complaint dated: 04.01.2023 submitted by the Petitioner within a timeframe as decided by this Honourable Court;

2. We asked learned counsel for the petitioner as to how this petition is maintainable against the appointment of the private respondent to the post of Commissioner, Securities and Exchange Commission of Pakistan (`SECP`) as she has already retired from the post of Commissioner on 05.03.2023 and/or her future appointment in SECP.

3. Learned counsel for the petitioner has submitted that the previous appointment of the private respondent as Commissioner SECP was/is illegal, unconstitutional, malafide, and void ab initio, therefore, she was/is disqualified to hold the post under section 18(e) of the Securities and Exchange Commission of Pakistan Act 1997 (SECP Act 1997) for the reason that she misused her power and authority to disclose the correct factual position about holding the previous status, which is in conflict of interest and violative of Section 16 of SECP Act 1997. Learned counsel for the petitioner further submitted that Ms. Sadia Khan / Respondent No. 6 does not have the requisite qualification and experience to

hold the post and to be considered for the post of Commissioner, SECP since she has mostly worked in her family business as opposed to any professional organization. As per learned counsel, her total work experience in a professional organization is of 4 years when she worked as an Executive Director at SECP. Learned counsel submitted that the appointment of Respondent No. 6 as Executive Director was also not based on merit as she was not qualified to be appointed as Executive Director at the age of 32 and with no prior relevant experience, hence, Respondent No. 6's time in the SECP was only limited. Her other experience including being posted as CEO of the Pakistan Institute of Corporate Governance was against the Act 1997 and other enabling provisions of law. The learned counsel submitted that Respondent No. 6 has misused her powers by awarding regulatory approvals to certain organizations which she favored and has unduly created hurdles in the licenses of her business rivals. Learned counsel next argued that she blocked an important IPO by giving adverse comments, based on a personal bias against the directors of that company and the advisors of the IPO. It is submitted that the aforementioned actions of Respondent No. 6 are blatant violations of the SECP Act and the Constitution; that the Petitioner submitted a complaint dated 04.01.2023 to the Federal Minister for Finance, in respect of the illegal appointment of private respondent. However, despite receipt of the aforesaid complaint, no action has been taken and no response has been received by the Petitioner either. Learned counsel prayed for issuance of the writ of quo warranto against respondent No.6 to either vacate the public office and/or she may not be considered for future appointment to the post of Commissioner SECP.

4. Mr. Haider Waheed, learned counsel for respondent No.6, has raised the question of maintainability of the instant petition by referring to the para-wise comments filed on behalf of the private respondent and submitted that this petition is not maintainable on the premise that the petitioner has come with unclean hands to settle his persona score with the respondent No.6. Learned counsel next submitted that respondent No.6 has already retired from the post of Commissioner SECP on 05.3.2023, as such this petition has become infructuous and even otherwise the same cannot be filed under the garb of the writ of quo warranto against the non-holder of public office after retirement. In support of his contentions, he relied upon the cases reported as PLD 2009 SC 28, 2007 SCMR 1318, PLD 2018 SC 114, 2004 SCMR 1299 & 2023 SCMR 162 and prayed for dismissal of the petition.

5. We have heard learned counsel for the parties on the maintainability of the petition and have perused the material available on record.

6. The Writ of Quo warranto is generally regarded as an appropriate and adequate remedy to determine the right or title to a public office and to oust an incumbent who has unlawfully usurped or intruded into such office or is unlawfully holding the same. A proceeding in quo warranto against a public officer is to determine whether he is entitled to hold the office and discharge its function. The Writ of Quo warranto is confined to testing the right or title to public office of a civil character.

7. In this case, the Petitioner has mainly impugned the appointment of respondent No.6 as Commissioner SECP on the premise that she does not qualify to hold Public Office and that she has no qualification and experience for the subject post or to hold the future post of Commissioner. The reasoning put forwarded by the petitioner is not tenable under the law for the reason that respondent No.6 has already retired from the post of Commissioner SECP on 05.03.2023. So far as the future appointment is concerned, the petitioner has to seek his remedy if the re-appointment of respondent No.6 is made in violation of law, therefore, at this stage, we will not travel into the question of future appointment of the private respondent.

8. The law vests the exclusive power to make the appointment on merits under the Acts / Ordinances and Rules framed thereunder. The Competent Authority of the respondent SECP is well within its right to prescribe criteria under the law. Responsibility of fixing criteria for the appointment of Commissioner SECP primarily falls on the Competent Authority of the SECP, subject to the law. It is also settled law that Courts ordinarily refrain from interfering in the policy-making domain of the Executive of the Public Sector companies/entities/organizations/authorities, until and unless the same offends the fundamental rights of the parties, which is not the case at hand as no right of the petitioner has been shown to have been violated.

9. In view of the above facts and circumstances of the case, we are constrained to observe that under the law, it is the prerogative of the competent authority of respondents to appoint a person to the post of Commissioner SECP under the fitness and capability required for the post under law. On the aforesaid proposition, we are fortified with the decision rendered by the Supreme Court in the case of Ghulam Rasool Vs. Government of Pakistan & others (PLD 2015 SC 6), wherein the Supreme Court has held in Paragraph No.9 that Courts ordinarily

refrain from interfering in the policy-making domain of the Executive. Furthermore, in absence of any malafide or illegality, the Competent Authority's decision to the appointment of the candidate on the subject post cannot be interfered with in a Constitutional Jurisdiction of this Court at this premature stage, as the subject appointment has not taken place yet. So far as her previous status is concerned, since the private respondent has already retired, therefore, no further indulgence is required on our part under Article 199 of the Constitution for the reason that the nature of relief that the petitioner intends to seek under Article 199(1)(b)(ii) of the Constitution, prima facie, is not available to him because the petitioner failed to point out any legal flaw in the future appointment of the private respondent to the post of Commissioner SECP. The reasons assigned by the petitioner in his memo of the petition are not sufficient to dislodge the aforesaid appointment process if any initiated by the competent authority on the purported plea of the petitioner. Additionally, the petitioner has failed to point out any violation of his fundamental rights and his indulgence in the affairs of the respondent SECP.

10. In the present case petitioner failed to point out any malice on the part of respondent SECP, therefore, this petition is found to be misconceived and is dismissed along with the pending application(s).

JUDGE

JUDGE

Nadir*