

**IN THE HIGH COURT OF SINDH, KARACHI****C.P.No.D-400 of 2024****Omer Khalid Vs. Federation of Pakistan & Others****For order as to maintainability**Before: **Mr. Justice Muhammad Junaid Ghaffar**  
**Mr. Justice Adnan ul Karim Memon**Date of hearing: **13.02.2024.**Date of order: **13.02.2024.**

Petitioner through Mr.Asim Iqbal advocate

**ORDER**

**Adnan-ul-Karim Memon, J.** This is a petition for the issuance of a writ of quo warranto under Article 199 (1)(a)(ii) of the Constitution of Islamic Republic of Pakistan, 1973, filed by Omer Khalid Ali against Dr. Shamshad Akhtar as Chairperson of Sui Southern Gas Company Limited (SSGCL) challenging therein her appointment as Chairperson of (SSGCL), with the prayer to declare respondent No.6 ineligible to contest the election for the appointment of Board of Directors of SSGCL.

2. The case of the petitioner is that respondent No.6 is holding public office as Caretaker Finance Minister, cannot retain her position as Chairperson and independent Director on the Board of Directors of Sui Southern Gas Company Ltd (SSGCL), violating the State Owned Enterprises (Governance and Operations) Act 2023 as she oversees the entire corporate sector, which is a potential conflict of interest, as the financial interests of the government and the other government-owned entities do not align. Petitioner seeks direction the respondent No.6 to return all the perks and privileges, received after 17.08.2023 as she cannot seek further appointment as Director of SSGCL.

3. Mr. Asim Iqbal learned counsel for the Petitioner has contended that respondent No.6 was appointed as Director/Chairperson SSGCL on 28.10.2019 for three years, which period has already expired on 28.10.2022 but she is still holding the position of Chairperson without lawful authority. He next contended that respondent No.6 has already got a four-time extension, which is illegal, unlawful, and a misuse of authority. He has further contended that on 17.08.2022, the Government of Pakistan, Cabinet Secretariat issued a Notification bearing No. 2-2/2023-Min-I, whereby respondent No.6 was appointed as Caretaker Minister (Finance); that being a Finance Minister, respondent No.6 is also head of Centrally Monetary Units of all the State Owned

Entities (SOEs), and other organizations as such respondent No.6 should have resigned from all her positions held in different public sectors/companies not only from Chairperson SSGCL but also from all other positions but she failed to do so and in enjoying all the positions and obtaining remuneration and other privileges as she is not legally entitled under the law. Per learned counsel, SSGCL is subject to the State Owned Enterprises (Governance and Operations) Act 2023 and the Companies Act of 2017, and the role of respondent No.6 as Finance Minister, played a part in announcing the SOE policy, which amounts to conflict of interest. Learned counsel emphasized that Act 2023 and the Companies Act of 2017 explicitly address the prohibition of individuals holding political office from serving as independent Directors. Learned counsel added that the Petroleum Division of the Ministry of Energy has several times reminded the Chairperson of the SSGCL Board that the term of the Board had already expired long ago and multiple extensions had also lapsed since but nothing bothered her to step down from the subject positions. Learned counsel referred to Section 166(2)(h) of the Companies Act 2017 and submitted that an independent Director, in the case of a public sector entity, should not be in the service of an institution owned or controlled by the government. However, at the same time respondent No.6 being the Caretaker Finance Minister is simultaneously holding the position of Board and Chairperson of an entity that is owned and controlled by the Government of Pakistan. On the question of maintainability of this petition, he submitted that this petition is maintainable under the law and liable to be heard and decided on merits. In support of his contention, he relied upon the cases reported as **2013 SCMR 268** *M/s Rashid Silk v Farooq Ahmed & others*, **2023 SCMR 162** *Jawad Ahmed Mir v Prof Dr Imtiaz Ali Khan and others*, **2017 SCMR, 206** *Shahid Pervez v Ejaz Ahmed and others* **PLD 1993 SC 473** *Muhammad Nawaz Sharif v President of Pakistan and others* **PLD 2012 SC 132** *Muhammad Yasin v Federation of Pakistan and others*, **PLD 2014 SC 206** *Khawaja Muhammad Asif v Federation of Pakistan and others*, **PLD 2010 SC 1109** *Bank of Punjab v Haris Steel Industries Pvt. Ltd* **PLD 1994 SC 641** *Abid Hussain v The State*, **PLD 2011 SC 997** *Watan Party and another v Federation of Pakistan and others* and **PLD 2011 SC 752** *Federation of Pakistan v Munir Hussain Bhatti and others*. He prayed for allowing the instant petition.

4. We have heard the learned counsel for the petitioner on the maintainability of the petition in terms of the order dated 24.01.2024 passed by this court and have perused the entire material available on record and the case law cited at the bar.

5. The matter of appointment of heads of statutory bodies, autonomous and semi-autonomous bodies, corporations, and Regulatory Authorities is governed under the Specific Statutory Provisions which cannot be overlooked or substituted by some other mechanism as held by the Supreme Court in the case of *Ghulam Rasool v Government of Pakistan* **PLD 2015 SC 6**.

6. We have noted that various acts/ordinances laid down specific criteria/qualifications for high-level appointments and empowered the Federal government to make such appointments. In the present case, the petitioner claims that respondent No.6 is one of the Board of Directors of SSGCL and at the same time she is holding the portfolio of Federal Minister (Finance) vide Notification dated 17.08.2023. It is also claimed that the Government of Pakistan Ministry of Energy (Petroleum Division) vide letter dated 11.10.2019 nominated respondent No.6 as Chairman Board of Directors of SSGCL. Petitioner also claims that notice under section 159(4) of the Companies Act, 2017 was issued to contest the election for Directors of SSGCL and respondent No.6 was also one of the candidates for the post of Female Director, however due to lethargic attitude of respondent No.6, such election was postponed till 04.03.2024, which triggered the cause to the petitioner to file the captioned petition for removal of respondent No.6 from the array of Board of Director of SSGCL on the premise that the term of the Board has already expired and elections are required to be held at the earliest.

7. The disqualification of independent directors of the State-Owned Entities is provided in Section 11 of the State Own Enterprises (Governance and Operations) Act 2023, which reads as under:-

- (a) *a person who is under eighteen years of age*
- (b) *a person who is not a natural person*
- © *a person who is an undischarged bankrupt in any jurisdiction*
- (d) *a person who has been convicted of an offence in any jurisdiction*
- (e) *a person who is prohibited under a statute or by order of court from being a director or promoter of or being concerned or taking part in the management of a corporation;*
- (f) *a person who is declared mentally unfit by a medical board constituted for this purpose;*
- (g) *a person who is in the service of Pakistan;*

- (h) *a member of the Majlis-e-Shoora or a Provincial Assembly.*
- (i) *a holder of a political officer whether or not in a legislative role; or*
- (j) *an employee of a state-owned enterprise.*

8. Section 13 of the State Own Enterprises (Governance and Operations) Act 2023, also provides terms of office of Directors; that once appointed shall hold office for the period specified under the applicable law, unless he resigns in writing or is removed earlier under the provision of the Act 2023; and, independent Director once appointed by the Federal Government shall not be removed unless it is established through an inquiry conducted in the prescribed manner with certain exceptions provided in Section 13 (a to d) and explanation (i) to (vi).

9. The Chairman of the Board and the Chief Executive Officer of the State-Owned Entities are provided in Section 15 of the State Own Enterprises (Governance and Operations) Act 2023. Section 16 thereof also provides criteria for fit and proper person to be appointed to the subject posts.

10. The questions involved in the present proceedings is whether the case of respondent No. 6 falls within the ambit of Article 199(1)(b)(ii) of the Constitution of the Islamic Republic of Pakistan 1973 and the principles and prerequisites relating to the writ of quo warranto.

11. In principle, the writ of quo warranto can be instituted by a person, though he may not come within the meaning of words aggrieved person. To maintain a writ of quo warranto there is no requirement for an aggrieved person, and a whistle-blower need not be personally aggrieved in the strict sense and may relay the information to the court to inquire from the person holding public office as held by the Supreme Court in the case of Jawad Ahmed Mir v Professor Dr. Imtiaz Ali Khan **2023 SCMR 162**.

12. However, at the same time, it is essential to see whether the petitioner has placed any material before this Court to attract Article 199(1)(b)(ii) of the Constitution of the Islamic Republic of Pakistan 1973 and whether the respondent No.6 lacks the qualification, skill, competence, and experience to hold the subject posts and whether the respondent No.6 is a Member of the Majlis-e-Shoora and can not hold any other public office.

13. It is to be noted that the Court must confine itself to the question of legality, whether a Decision-Making Authority exceeded its powers;

committed an error of law; committed a breach of the rules; or abused its powers. Therefore, it is not for this Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair.

14. Primarily, there are three grounds upon which an administrative action is subject to control by judicial review; namely, illegality which means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it; irrationality which means unreasonableness; and procedural impropriety.

15. In the present case, the petitioner has not placed on record any ground which could suggest that respondent No.6 suffers from any inherent disqualification to hold the subject post in terms of Section 11 of the State Own Enterprises (Governance and Operations) Act 2023, which is governing law and is member of the Majlis-e-Shoora, merely appointment of the respondent No.6 as Caretaker Minister in caretaker setup in terms of third proviso to Clause (1A) of Article 224, read with Article 58 of the Constitution of Pakistan 1973 cannot be assumed to be a Member of the Majlis-e-Shoora which is comprising of elected National Assembly Members and Caretaker Ministers are not chosen representatives of the people of Pakistan.

16. Having failed to show, either that Respondent 6 suffered from any disqualification, as alleged by him in terms of Articles of the Constitution as discussed supra, or that there was a blot of any nature on her name or was under a cloud that was so blatant as to require interference by this Court as it may prick the judicial conscience of this Court.

17. The petitioner has not been able to establish that Respondent No. 6 suffers from any inherent disqualification. It was for the petitioner to satisfy this Court that the appointment of Respondent No. 6 as Chairperson SSGCL by the Prime Minister was tarnished by favouritism and cronyism. Other than oral assertions and unsubstantiated allegations nothing has been placed on record to support this assertion. So far as the holding of election for the appointment of the Board of Director SSGCL it is for the competent authority to take steps in accordance with law.

18. For the reasons recorded above, we do not find any merit in this petition. It is accordingly dismissed in limine along with pending application(s)

**JUDGE**

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