

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

C. P. No. D-3201 of 2024

Present:

Yousuf Ali Sayeed and
Arbab Ali Hakro, JJ

Syed Saulat Hussain Naqvi-----Petitioner

Versus

Federation of Pakistan & others-----Respondents

Ahmed Masood, Advocate, for the Petitioner.

Zahid F. Ebrahim, Advocate, for the Respondent No.3.

Zehrah S. Vayani, Assistant Attorney General for Pakistan.

Date of hearing : 06.09.2024, 11.09.2024 and
19.09.2024.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner is an aspirant to the post of Chief Executive Officer (“**CEO**”) of the National Insurance Company Limited (“**NICL**”), arrayed as the Respondent No.3, having applied for that post in pursuance of an Advertisement dated 18.05.2024 issued by the Board of Directors for inviting applications in that regard. Be that as it may, he has since preferred this Petition under Article 199 of the Constitution so as to challenge the criteria and process for recruitment to that post along with the Advertisement itself while impugning the very composition and intent of the Board.

2. The essence of the grievance espoused by the Petitioner is encapsulated in Paragraph 5 of the Memo of Petition, where it has been stated that the same “emanates from Respondent No.3’s issuance of the impugned Advertisement dated May 18, 2024 through which Respondent No.3’s Board has solicited applications for the position of its Chief Executive Officer. The Petitioner also seeks to apply for the said position. Nonetheless, given the malafide and the illegalities which have been symptomatic of Respondent No.3’s Board, the Petitioner most respectfully submits that the Petitioner’s fate has ben entrusted to an unlawfully constituted Board”. Be that as it may, a host of prayers have been advanced through the Petition, with it being sought *inter alia* that this Court be pleased to:

- I. Declare the appointment of Respondents No.4 and 5 vide the Impugned Notification dated 08.08.2023, to be violative of law and hence the same is liable to be set aside;
- II. Declare that the number of Board Members of the Respondent No.3 has been increased vide the Impugned Notification dated 08.08.2023, without conducting an Annual General Meeting and hence, the same is liable to be set aside;
- III. Declare that the Management of the Respondent No.3 is to be appointed through the Board of the Respondent No.3 meaning thereby that the Respondents No.3 has circumvented the Statutory Regulations in place by appointing the Respondent No.6 as the Company Secretary through the Impugned Office Order dated 10.08.2023 and hence the same is liable to be set aside;
- IV. Declare that the selection and appointment method for the post of Chief Executive of the Respondent No.3 is to be in accordance Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015 and Insurance Companies (Sound and Prudent Management) Regulations, 2012;

- V. Declare that the Impugned Advertisement dated 18.05.2024 is illegal, malafide, arbitrary and ultra vires of the Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015 and Insurance Companies (Sound and Prudent Management) Regulations, 2012;
 - VI. Direct the Respondents No.1 to 3 to appoint the Chief Executive of the Respondent No.3 in accordance with the Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015 and Insurance Companies (Sound and Prudent Management) Regulations, 2012;
 - VII. Suspend the operation of the Impugned Notification dated 08.08.2023;
 - VIII. Suspend the operation of the Impugned Office Order dated 10.08.2023;
 - IX. Suspend the operation of the Impugned Advertisement dated 18.05.2024;
 - X. Restrain the Respondents, their officers, agents or anyone acting on their behalf from implementing the Impugned Advertisement dated 18.05.2024 and/or in any manner appoint any person as the Chief Executive of the Respondent No.3 in accordance with the same before first ensuring compliance with the Statutory Framework in Place with regards to the Management of the Company and the Board of the Company;”
3. Proceeding with the matter, learned counsel for the Petitioner submitted that NICL was a State Owned Enterprise (“**SOE**”) within the contemplation of the State Owned Enterprises Act, 2023 (the “**SOE Act**”) and the size of its Board had been increased from 7 to 8 vide the impugned Notification dated 08.08.2023 issued by the Federal Government in purported exercise of power under that statute but without the concurrence of its General Body, which offended Clauses 54 and 55 of its Memorandum and Articles.

4. He further submitted that the Respondents Nos. 4 and 5, who were brothers inter se, had also thereby been inducted as independent directors, contrary to Section 166(2) of the Companies Act 2017 (the “**Companies Act**”), and the composition of the Board was defective for that reason as well as due to the absence of female representation in terms of Section 154 thereof. He argued that the Board had then issued the Advertisement while setting an experience requirement of 15 years and an upper age limit of 62 years with mala fide intent at the behest of the incumbent CEO so as to facilitate his reappointment, with it being alleged that the incumbent had engaged in various acts of malfeasance during his tenure. It was submitted that the entire matter had been orchestrated so as to ensure that the Board was hand in glove with the present CEO so as to perpetuate his tenure for their personal gain to the detriment of NICL. He conceded that the age requirement had been changed for the first time by the Respondent No.3 in the advertisement published on 03.12.2020, being the previous time that the post had been advertised, but submitted that in the earlier two advertisements published on 05.09.2020 and 27.01.2019, the age limit set had been in the range of 45-57 years. He argued that it had then been changed on the next occasion so as to cater to the current CEO. He contended further that the aforementioned factors constituted irregularities that evidenced collusion of the Respondents Nos.4 and 5 to ensure that the incumbent CEO was re-appointed and argued that as the constitution of the Board was questionable, any recruitment and appointment would be illegal, hence, the process ought to be reinitiated after an Annual General Meeting had been convened in order to constitute a lawful board that could then initiate a fresh advertisement in the matter.

5. Responding to those assertions, learned counsel for the Respondent No.3 pointed out that while the tenor of the Petition and the arguments advanced in the matter gravitated around the incumbent CEO, who was said to be the architect of an enterprise to further entrench him in that capacity within NICL, he had not even been arrayed as a respondent. Furthermore, the allegations regarding the Board and its composition being engineered so as to undertake a recruitment process skewed to favour the CEO were wildly fanciful and remained wholly unsubstantiated.

6. He submitted that the Notification dated 08.08.2023 issued by the Ministry of Commerce, Government of Pakistan reconstituting the Board was a valid exercise of power and authority under the SOE Act, which had then been approved by the SECP through its letter dated 26.10.2023, and only brought into question over a year later, that too by someone who himself was merely an aspirant to the post to which the Advertisement related.

7. He argued that Section 166 (2) (e) of the Companies Act did not preclude the Respondents Nos. 4 and 5 from being appointed as independent Directors as their relationship inter-se sans a relationship to the promoters/shareholders did not bar their appointment. He submitted that Section 153 of the Companies Act did not spell out such a disqualification. He argued that as an SOE, the Respondent No.3 was to be governed in terms of the SOE Act, which was a special law.

8. He also pointed out that while the Petition was replete with references to a sixth respondent and to the office/role of the Company Secretary, with the Impugned Office Order dated 10.08.2023 pertaining to that functionary and Prayer Clauses III and VIII being related thereto, only 5 respondents had been arrayed in the matter, rendering such averments and prayers superfluous, to which learned counsel for the Petitioner responded by submitting that such grounds and prayers as related to the matter of the Company Secretary were not being pressed

9. Having considered the argument advanced, it merits consideration that while Section 166 (2) of the Companies Act states that *“For the purpose of this section, an independent director means a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the company, its associated companies, subsidiaries, holding company or directors; and he can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest”*, with the proviso to that Section going on to clarify that one of the circumstances where a director would not be considered to be independent is where *“he is a close relative of the company’s promoters, directors or major shareholders”*, with the term *“close relative”* being explained as meaning *“spouse(s), lineal ascendants and descendants and siblings”*, we are of view that the provision does not serve to preclude two or more persons who are related inter se but as are otherwise unrelated to the sponsors/shareholders or directors representing otherwise representing their interests from being appointed as independent directors of a company.

10. As regards the matter of female representation on the Board, it merits consideration that while the proviso to Section 154 of the Companies Act envisages “...*that public interest companies shall be required to have female representation in their board as may be specified by the Commission*” it was denied that any such requirement had been imposed and learned counsel for the Petitioner was also unable to point to any notification or directive in that regard.

11. Furthermore, as pointed out by learned counsel for the Respondent No.3, S. 29 of the SOE Act empowers the Federal Government to exercise all the powers and rights of shareholders with the Respondent No.3 being entirely owned by the Federal Government and its shareholding vesting solely in the President of Pakistan, which factual aspect remained unrefuted. As such, the argument that an AGM ought to have been called for approving the increase in the size of its Board appears fallacious and misconceived.

12. Through his arguments, learned counsel appearing on behalf of the Petitioner painted NICL to be rife with malfeasance, with its incumbent CEO being at the epicentre thereof and to have so entrenched himself within the organisation so as to be able to orchestrate his own continuity in that role. However, it falls to be considered that when those contentions are examined, the suggestion that emerges is that the Federal Government has conspired so as to expand the size of the Board and induct handpicked persons for the role of independent directors while excluding female representation for the ulterior motive of then tailoring the

Advertisement to fit the specifications met by the incumbent so as to pave the way for his reappointment, all of which is far-fetched to say the least. As it stands, it appears that a series of disparate allegations have been conflated so as to cobble together a case against the recruitment process, which, on examination, does not suffer from any contravention of law, rule, policy so as to warrant interference in exercise of the constitutional jurisdiction of this Court.

13. It is for the foregoing reasons that the Petition was dismissed vide a short Order made in Court upon culmination of the hearing on 19.09.2024.

JUDGE

JUDGE

MUBASHIR

