

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.859 of 2017

Date	Order with Signature of Judge
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Present: **Mr. Justice Nazar Akbar**

Plaintiff No.1 : Agha Imtiaz Ali Khan Babar
Plaintiff No.2 : Manzoor Ahmed Mughal
Plaintiff No.3 : Imad Udin Khoso, Through Mr. Abdul Salam Memon, Advocate.

Defendant No.1 : The Federation of Pakistan
Defendant No.2 : The Prime Minister Secretariat,
Through Mr. Saleemuddin A. Patoli,
Assistant Attorney General.

Defendant No.3 : The Sukkur Electric Power Company,
Through Mr. Ijaz Ahmed Zahid, Advocate
alongwith Mr. Sattar Bux Soomro,
Director (Legal), SEPCO, Sukkur.

Date of hearing : 25.07.2017

ORDER

NAZAR AKBAR, J:- The plaintiffs through this application under Order 39 Rules 1 & 2 CPC (CMA No.4460/2017) have sought interim orders to suspend the operation of Notification dated **17.2.2017** pending the suit. Their names as Directors on reconstitution of the Board of Directors of defendant No.3 (SEPCO) have been excluded from the Board.

2. The claim of plaintiffs is that they were nominated as Directors of defendant No.3 by defendant No.2 through an earlier notification dated **17.6.2015** which was also a reconstitution of SEPCO Board of Directors. Through this suit filed on **28.2.2017** they have prayed, amongst other, for the decree of declarations that (1) the plaintiffs cannot be removed from the position of SEPCO except in accordance with the Companies Ordinance, 1984

and (2) the notification dated **17.2.2017** is illegal and void ab initio. The plaintiffs have also prayed that they should be allowed to continue as Directors for three years in terms of Companies Ordinance, 1984 and they have also claimed damages to the tune of Rs.30,000,000/- from the defendants jointly and severally i.e from the company (defendant No.3) in which they were nominated as directors, the Prime Minister Secretariat (defendant No.2) who has nominated them and the Federation of Pakistan (defendant No.1), the owners of the company.

3. On **08.3.2017** defendant No.3 filed a comprehensive counter affidavit wherein following legal objections have been raised:-

- 1) *The cause of action has accrued in Sukkur, therefore, this Court has no jurisdiction to entertain the suit for want of territorial jurisdiction.*
- 2) *The suit has been overvalued to bring within the jurisdiction of this Hon'ble Court.*
- 3) *Three plaintiffs have filed this suit, however, despite having a different claim, therefore, they should have filed separate suits.*

4. It has further been contended in the counter affidavit that there has been no violation of Companies Ordinance, 1984 since the plaintiffs were nominated as directors under **Section 183** of the Companies Ordinance, 1984. They have no vested right in the office of Directors of defendant No.3 being nominee.

5. The learned counsel for the plaintiffs has contended that the impugned notification dated 17.2.2017 is without lawful authority since it is in violation of **Rule 5** of the Public Sector Companies (Corporate Governance) Rules, 2013, as according to him, the provisions of **Section 183** of the Companies Ordinance 1984 stand

compromised by the statutory rules and the “pleasure” of the authority nominating the plaintiffs stand surrendered. His second contention is that the plaintiffs are aggrieved because they have social status in the society by virtue of holding the office of directorship of SEPCO and on exclusion of their names on reconstitution of the Board of Directors of SEPCO their social status has been adversely effected, therefore, they are entitled for the damages, too. He has relied on the following case laws:-

- i) Muhammad Mushtaq vs. Chancellor, Government College University, Faisalabad **(2005 PLC (C.S) 1300)**;
- ii) Syed Muhammad Ayyub (P.S.E.I. Executive Engineer, Irrigation vs. The Government of West Pakistan **(PLD 1957 (W.P) Lahore 487)**;
- iii) The Province of the Punjab vs. Ch. Nazir Hussain **(PLD 1956 (W.P) Lahore 556)**;
- iv) Mian Muhammad Anwar Monnoo and 2 others vs. Kotri Textile Mills Ltd. and 5 others **(1990 MLD 348)**

6. Learned counsel for the defendant No.3 has contended that the plaintiffs have no vested right as nominee Directors and they have not and shall not suffer irreparable loss consequent to the notification dated **17.2.2017**. They have suppressed the facts and obtained exparte interim order on **01.3.2017** by misrepresentation on the strength of an order dated **30.6.2015** passed in another suit bearing **suit No.1096/2015** though the said interim orders had already been vacated on **01.12.2015**. The learned counsel for the plaintiffs has placed on record another notification of the Government of Pakistan dated **13.3.2014**, whereby the plaintiffs No.1 and 3 have been nominated on the Board of Directors of SEPCO and their names were also included in the subsequent notification dated **17.6.2015** on reconstituting SEPCO Board of Directors. He has further contended that in terms of **Section 183**

of the Companies Ordinance, 1984 the status and position of the plaintiffs as “Nominee” Directors cannot be equated with the status of “elected” Directors of a company under **Section 178** since the provisions of terms of office as elected Directors under **Section 180** as well as their removal from the office of Directors under **Section 181** of the Companies Ordinance, 1984 is not applicable to the plaintiffs. In **Section 183** of the Companies Ordinance, 1984 the legislature has clearly mentioned that the provision of Sections 178, 180 and 181 of the Companies Ordinance, 1984 **shall** not apply to the Directors nominated by the Government. He has further relied on the following case laws on the point that once the plaintiffs have claimed damages, the question of irreparable loss does not arise and therefore, even otherwise no interim injunction can be granted.

- i) Bolan Beverages (Pvt. Limited vs. PEPSICO. INC. and 4 others **(2005 PLC (C.S) 1300)**;
- ii) Government of Pakistan and 3 others vs. Kamruddin Valika **(1996 CLC 1086)**.

7. I have heard learned counsel for the plaintiffs and the defendants and perused record.

8. The perusal of record shows that by order dated **01.3.2017** this Court has been pleased to grant interim orders on this application being persuaded by the orders in identical suit No.1096 of 2014 annexure “D” at page-73. Therefore, the said suit was tagged with this file. The perusal of file of suit No.1096/2015 shows that after obtaining the status-quo orders in the said suit the learned counsel for the plaintiffs almost never attended the Court and therefore, after warnings incorporated in four consecutive orders, the exparte interim order passed on **30.6.2015**

were ultimately recalled by order dated **01.12.2015**. In the case in hand the conduct of the learned counsel for the plaintiffs is almost the same. The interim order was obtained on **01.3.2017** and since then most of the adjournments were sought by the plaintiffs' counsel. On **17.5.2017** he was warned that on the next date, which was fixed on **01.6.2017**, in case of his failure to proceed interim order shall be vacated. The record further reveals that in suit No.1096/2015 very notification dated **17.6.2015** appointing the plaintiffs as nominee Directors on reconstitution of Board of Directors of SEPCO is under challenge. Annexure "A" of the instant suit is the same notification dated 17.6.2015. Even today it is subjudice before this Court in suit No.1096/2015 wherein the prayer clause "B" is as follows:-

- a)
- b) *Declare that the letter date **17.6.2015** i.e impugned letter is without jurisdiction, uncalled for, illegal, of no legal effect and thus void ab initio and consequently to set aside the same.*

9. In the suit in hand filed by the plaintiffs, the plaintiffs' claim in para-2 that the plaintiffs were "**elected**" Directors of the defendant No.3 for three years from **17.6.2015** as per Companies Ordinance, 1984 and they have annexed the notification dated **17.6.2015** as annexure "A" which is impugned in the earlier suit No.1096/2015. It is strange that the plaintiffs despite knowledge that their appointment as Directors of defendant No.3 has been challenged by one of the earlier nominee Directors on the Board of Directors of defendant No.3 did not contest the said suit nor attempted to become party in the said suit to protect their rights, if any, under the said notification. However, on reconstitution of the

Board of Directors on **17.2.2017**, when they were excluded from the Board of Directors of the defendant No.3, they have filed an identical suit in which, amongst others, the prayer “B” is identical to the prayer “B” in suit No.1096/2015 and it is as follows:-

- a)
- b) *To declare that the letter date **17.2.2017**, i.e, impugned letter is without jurisdiction, uncalled for, illegal, of no legal effect and thus void-ab-initio and consequently set-aside the same.*

10. The above facts from the record show that the plaintiffs have not approached the Court with clean hands. The impugned notification and the notification whereby the plaintiffs claim to have been placed on the Board of Directors of SEPCO have admittedly been issued by one and the same competent authority in exercise of the powers under **Section 183** of the Companies Ordinance, 1984. The claim of plaintiffs in para-2 of the plaint that they were elected Directors is unfortunately willful misstatement before the Court. Learned counsel for the plaintiffs has repeatedly argued that the “pleasure of the authority” in **Section 183** of the Companies Ordinance, 1984 was compromised in statutory rules. Such argument itself is an admission that the appointment of the plaintiffs was not in terms of **Section 178** of the Companies Ordinance, 1984 and that they were appointed under **Section 183** of the Companies Ordinance, 1984 and yet the learned counsel while drafting the suit has stated in para-2 of the plaint that the plaintiffs are “**elected**” Directors. Learned counsel for the plaintiffs when confronted with the documents showing that plaintiff No.1 and 3 namely Agha Imtiaz Ali Babar and Imadudin Khoso were nominated on the Board of Directors of SEPCO on **13.3.2014**, he claimed that the period of three years would re-start from

17.2.2015, though he knows that the provision of **Section 180** of Companies Ordinance, 1984 referring to the duration of office for a period of three years is in relation to the Directors elected under **Section 178** of the Companies Ordinance, 1984. Plaintiffs No.1 and 3 once nominated on **13.3.2014**, were not supposed to be reappointed in a reconstituted board as claimed by their counsel himself before expiry of protected period for 3 years. Therefore, the reference to the provisions of **Section 180** of the Companies Ordinance, 1984 is fatal to the claim of the plaintiffs No.1 and 3, since their term of three years from **13.3.2014** has not expired on **17.6.2015**.

11. The case laws relied upon by the learned counsel for the plaintiffs are not on the point for grant of injunction rather these citations are about the meaning and import of the word “pleasure” in different enactments was examined by the Courts in their final orders. In the first three case laws the action challenged before the Courts were challenged by the civil servants whose vested right to hold the particular office was subject matter of the litigation before the Courts. The only case from the jurisdiction of Company Law at serial No.4 in para-5 above was filed by an “elected director” who was elected in terms of **Section 178** of the Companies Ordinance, 1984. The case laws relied upon by the learned counsel for the plaintiffs are totally irrelevant since terms and conditions and period for holding the office of Director by “nominee” Director are not specified under the law except the period of pleasure of the authority which has nominated Directors. It may be noted here that the impugned notification dated **17.2.2017** and the notification, whereby the plaintiffs were nominated on the Board of

Directors of SEPCO dated **17.6.2015**, have admittedly been issued by one and the same competent authority. If we accept the contention of learned counsel that the competent authority on **17.2.2017** was not competent to reconstitute Board of Directors of SEPCO and if it was an illegal exercise of the authority on any of the grounds mentioned in the plaint, then this argument will also be applicable on the exercise of the same authority in issuing notification dated **17.6.2015** (annexure "A") appointing the plaintiffs on reconstituting the Board of Directors of SEPCO since prior to **17.6.2015** another Board of Directors was already in existence since **06.11.2013** and they have not completed three years term. Therefore, any nomination on the Board of Directors on **13.3.2014** or its reconstitution on **17.6.2015** was equally an illegal exercise of the authority by the defendants. However, this is not the correct legal position. The correct legal position is that since the provision of **Section 178, Section 180** or **Section 181** of the Companies Ordinance, 1984 are not applicable to the Director appointed under **Section 183** of the Companies Ordinance, 1984, the nominee Directors have no vested right to hold the office for any specified period. Since the provisions of **Section 181** of the Companies Ordinance, 1984 dealing with the procedure and method of "Removal of director" is also not applicable to the Directors nominated under **Section 183** of the Companies Ordinance, 1984, the inescapable conclusion is that the power of "removal" of a "Nominee Director" is inherent power of the authority which nominated him (the Director). Otherwise once nominated as Director, he would hold the office "during his life" and not "during the pleasure" of the authority which nominated him because the provision of **Section 180** (period of three years)

and **Section 181** (Removal of Director) are not applicable to the Director nominated under **Section 183** of the Ordinance, 1984.

12. The last contention of learned counsel for the plaintiffs that the reconstitution of Board of Directors of defendant No.3 by notification dated 17.2.2017 is in violation of the Rules framed by the Federal Government in exercise of powers under Section 506 of the Companies Ordinance, 1984 particularly **Rule 5** of the **Public Sector Companies (Corporate Governance) Rules, 2013** is equally misconceived. The Rules framed by the Federal Government in exercise of power conferred by the Companies Ordinance, 1984 are not supposed to be in conflict with any of the provision of the Companies Ordinance, 1984, nor on mere reading of **Rule 5** of the said Rules it can be said that the reconstitution of Board of Directors has violated Rule 5 *ibid*. The said Rules do not provide the mechanism of appointment of nominee Directors in terms of **Section 183** nor it can be construed that said rule has curtailed the powers of the authority to “nominate” Director and to “remove” the said Director by application of provision of **Section 183** of the Companies Ordinance 1984. Except **Rule 5** of the aforementioned rules no other provision of law and particularly the Companies Ordinance, 1984 has been referred to by the learned counsel for the plaintiff to show a prima-facie case, irreparable loss or a balance of convenience for grant of the interim orders sought by the plaintiffs in this suit.

13. Learned counsel for the plaintiffs has not said anything in rebuttal to the case law that once the plaintiffs claim a definite amount of damages as compensation on account of the omissions or failure of discharge of their duty by the defendants, the plaintiffs

lose their right to seek restraining orders on the ground of “irreparable loss”. The plaintiffs’ loss, if any, once calculated by the plaintiffs themselves, becomes reparable. Relevant portion of the judgment from the case of Bolan Beverages (Pvt. Limited vs. PEPSICO. INC. and 4 others reported in **2004 CLD 1530 (SC)** is reproduced below:-

“There is no cavil with the proposition that money reliefs like claim of compensation and damages are brought about by the plaintiffs mostly to avoid the mischief of Order II, Rule 2 of the C.P.C yet the calculation of such amount and the claim thereof would automatically give an impression that such loss or damage is reparable in terms of money. We agree with the learned counsel and believe that, in the circumstances of the present case, the loss cannot be irreparable in the case the decree for compensation and damages etc., as claimed by the plaintiff is ultimately granted.”

14. In view of the above facts, law and the discussion I have dismissed the Application under Section XXXIX Rules 1 and 2 (CMA No.4460/2017) by a short order dated 25.7.2017, as no case was made out for injunction to suspend the impugned notification. The above are the reasons for the same.

J U D G E

Karachi,
Dated: 31-07-2017

Ayaz Gul