

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

Present:

Mr. Justice Syed Hassan Azhar Rizvi

Mr. Justice Adnan-ul-Karim Memon

**C.P No.D-2438 of 2016**

Pakistan Petroleum Limited Officers  
Associations & Others .....Petitioners

Versus

The Federation of Pakistan & others .....Respondents

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**Date of hearing: 16.08.2017**

Mr. Muhammad Ali Waris Lari Advocate for Petitioner.  
Mr. Taha Alizai Advocate for the Respondent No.3 to 5.  
Mr. Shamay Shams Advocate for Respondent No.9  
Mr. Asim Iqbal Advocate for Respondent No.10  
Mr. Muhammad Aslam Butt DAG.

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON,J:-** Through the instant  
Petition, the Petitioners have asked for issuance of Writ of quo-  
warranto against the Respondent No.3 to vacate the office of the  
Managing Director/Chief Executive Officer of Pakistan Petroleum  
Limited, thus, impugned the Notification No.2 (13) /201-GAS,  
Islamabad dated 31.01.2015, issued by the Ministry of Petroleum  
& Natural Resources, Government of Pakistan/ Respondent No.1  
regarding appointment of Respondent No.3 as Managing  
Director/Chief Executive Officer of Pakistan Petroleum Limited

(hereinafter referred to as PPL) as illegal, abinitio-void and is of no legal effect, whatsoever.

2. Gist of the case is that the Petitioners are employees of M/s. Pakistan Petroleum Limited and claim that the Respondent No.3 is a citizen of United States of America, thus not entitled to hold public office of M/s. Pakistan Petroleum Limited/the Respondent-Company hence his appointment is in violation of the dicta laid down by the Honorable Supreme Court of Pakistan in various pronouncements; that Respondent No.3 does not meet the criteria to hold the public office, who is in advance age i.e. more than 55-57 years of age as required under the advertisement dated 24.12.2014 thus is not qualified to hold the office. Petitioners further assert that the Chairman of the PPL is attempting to sell the Pakistan Petroleum Limited in piecemeal or in toto in one go to attract the Privatization Commission/Respondent No.2. It is further averred by them that the Respondents are responsible to cause colossal loss to PPL (Public Limited Company) and public at large in particular and to the country in general and Petitioner Association has filed the instant Petition to save the Public Institution from destruction. It is added by the Petitioners that inquiry in the matters of Pakistan Petroleum Limited be initiated through honest and devoted officers of the NAB. Petitioners have voiced their grievance that Respondents are duty bound to make necessary arrangements/permission for freedom of Association and hearing their grievances and to safeguard the rights of the members in accordance with law as guaranteed in Constitution of

Islamic Republic of Pakistan 1973; that Respondent No.3 Syed Wamiq Abrar Bokhari, Managing Director / Chief Executive Officer Pakistan Petroleum Ltd is holding the post of Managing Director of the Respondent-Company without lawful authority; that maximum age limit as set forth in the advertisement for the post of Managing Director of PPL is of 55-57 years whereas the Respondent No.3 is above 57 years, hence, not entitled to hold the said post. It is further added by the Petitioners that Respondent No.3 is holder of dual Nationality i.e. USA, therefore, he has no any interest in the affairs of the Respondent-Company; but to secure his personal interest thereby committed grave illegalities by embezzling the assets of the Respondent-Company. Petitioners further added that the Respondent No.3 is a minor shareholder in his family's exploration and production of Company namely New Horizon Exploration and Production Limited (hereinafter referred to as NHEPL), where he was earlier Managing Director as well, thus there is conflict of interest therefore, he is not fit person to run the affairs of the Respondent-Company; that NHEPL and PPL are Joint Venture (JV) Partners in a number of concession areas and Managing Director of PPL is extending undue-favoritism to NHEPL, including acquisition of working interest of NHEPL by PPL. In addition to, he does not meet the criteria of "Independent" and "Fit" and "Proper Person" to hold the post of Managing Director of PPL under the Public Sector Companies (Corporate Governance) Rules, 2013 and Code of Corporate Governance, 2012 issued by the Securities & Exchange Commission of Pakistan; that appointment of Managing Director of PPL is not only illegal, but he appointed

some of employees of NHEPL, ENI in PPL by taking advantage of his seat/post, despite the fact that they were rejected by PPL's respective functional heads and they were forced by the Managing Director of PPL to change/amend/revise their recommendations, which is abuse/misuse of Managing Director's Authority & Code of Conduct; that the Respondent No.3 does not have experience of Oil and Gas business, which is severely affecting decision making process and implementation of Company's work program, which will not only result in PPL's being in default, but also damage the reputation of Government of Pakistan.

3. Notice was issued to the Respondents and the Respondent No. 03 to 05 filed their para-wise comments and denied the allegations leveled against them.

4. Mr. Muhammad Ali Waris Lari, learned Counsel for the Petitioners argued that Respondent No.3 is holder of Public Office as embodied under Article 199 (1) (b) (ii) of the Constitution; that Respondent No.3 is not qualified to hold a public office of Managing Director/Chief Executive Officer in Pakistan Petroleum Ltd; that as per Public Notice, dated 24.12.2014 for the appointment of Managing Director/Chief Executive Officer in Pakistan Petroleum Ltd., the qualification and age is provided as maximum age 55-57 years whereas the Respondent No. 1 is above 57 years of age, therefore, he cannot hold the said post; that Respondent No.3 has violated the Company Rules and Regulations, caused colossal loss to the Public Exchequer by committing misappropriation, fraud and robbed the public money; that due to

the illegal actions of Respondent No. 3, the Petitioners have suffered mental torture and agony as they are willing workers of Pakistan Petroleum Ltd., as they do not see the Respondent-Company to be shown as defaulter and in loss; that the Respondent No.3 is holding dual Nationality and has little interest in the affairs of the Respondent-Company, but to secure his personal interest; that his appointment is called in question under Article 199 (1)(b)(ii) of the Constitution of Islamic Republic of Pakistan 1973, being a holder of Public Office without lawful authority. He lastly prays for issuance of Writ in the nature of quowarranto against Respondent No.3 to meet the ends of justice. In support of his contention, learned counsel placed reliance upon the case of Capt. (Retd) Muhammad Naseem Hijazi versus Province of Punjab and others ( 2000 SCMR 1720) and Pakistan Tobacco Board and others versus Tahir Raza and others (2007 SCMR 97).

5. Mr. Taha Alizai, learned counsel for Respondents No. 3 to 5, contended that the instant Petition is not maintainable in law; that the issues raised by the learned counsel for the Petitioners involve factual controversy, which requires evidence; therefore, Constitutional Jurisdiction of this Court cannot be invoked. He further added that the Petitioners Association is not registered/recognized under the relevant law thus cannot invoke the jurisdiction of this Court; that Petitioners are employees of PPL and are governed by Master and Servant relationship; therefore Writ Petition is not maintainable against the Respondent No 3 to 5; that the Petitioners are not aggrieved persons within the meaning

of Article 199 (1)(a)(b)(ii) of the Constitution of Pakistan, therefore, are not entitled for relief; that the Petitioners have raised multiple frivolous grounds to harass Respondents No. 3 to 5; that the Petitioners have not come with clean hands and not disclosed the true facts before this Court; that the Respondent No.3 has sufficient experience and expertise in the relevant field to hold the post of Managing Director of PPL; that Respondent No.3 is validly appointed by the Competent Authority under the law and fulfills all the codal formalities for the post of Managing Director of PPL under Section 5 (2) of the Public Sector Companies (Corporate Governance) Rules, 2013 and Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015; that the allegations of the Petitioners regarding violation of Rules and Regulations of Company/PPL and infringement of their rights and other ancillary matters are baseless and Petitioners are put to strict proof thereof; therefore the same factual controversy cannot be resolved in the Writ Petition. Per learned counsel, anybody, who qualifies and having sufficient experience in the relevant field, can be appointed as Managing Director /Chief Executive Officer of PPL, and there is no requirement of age limit in the Rules and Guidelines issued by the Competent Authority. However, he further added that a summary for the Prime Minister for appointment of Managing Director/Chief Executive Officer, Pakistan Petroleum Limited was floated for waving off the upper age limit of 57 years and the Competent Authority approved the same. Consequently Notification dated 31.1.2015 was issued by the Respondent No.1

which is in accordance with the law. He lastly prayed for dismissal of the instant petition.

6. Mr. Shaamay Shams, learned Counsel for the Respondent No. 9 supported the contention of learned counsel for the Respondent No. 3 to 5.

7. Mr. Asim Iqbal, learned Counsel for the Respondent No. 10 supported the contention of learned counsel for the Respondent No. 3 to 5 and contended that Petitioners Association is not aggrieved person, within the meaning of Article 199 of the Constitution of Islamic Republic of Pakistan, therefore instant Petition is not maintainable under the law.

8. Mr. Muhammad Aslam Butt, Deputy Attorney General, representing the Respondents No.1 supported the contention of learned counsel for Respondent No. 3 to 5. However he added that PPL is not a Statutory Body but registered under the Companies Law and the appointment of the Respondent No.3 is made by the Board of Directors/Respondent No.4 with the approval of Competent Authority under the Public Sector Companies (Corporate Governance) Rules, 2013 and Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015. He further added that Respondent No 3 is well experienced and validly appointed by the Competent Authority for the post of Managing Director of PPL, thus does not suffer from any defect or disqualification, under the law, therefore the instant Petition is

misconceived. He concluded by saying that the instant Petition is not maintainable under Article 199 of the Constitution.

9. We have heard learned Counsel for the parties and perused the material available on record and case law cited at the bar.

10. In the first place, we would like to examine the issue of maintainability of the instant Petition under Article 199 of the Constitution. As per profile, the PPL/Respondent-Company is a listed Public Limited Company and State owned Entity (SOE). Government of Pakistan is major shareholder, thus falls within the ambit of Public Sector Company as defined under Section 2(g) of Public Sector Companies, (Corporate Governance) Rules, 2013. The “PPL” is headed by Chief Executive Officer/Managing Director, who is Nominee of Government of Pakistan under Public Sector Companies, (Corporate Governance) Rules, 2013. The post of Chief Executive/Managing Director of PPL is a Public Office/Public Sector Post, therefore falls within the Purview of Sub-Clause (1)(b)(ii) of the Article 199 of the Constitution, which permits the High Court to issue a “Writ of Quo-warranto” requiring a person within its territorial jurisdiction of the Court holding or purporting to hold a Public Office to show under what authority of law he claims to hold that Office. It is also clear that, while acting under Clauses (b) (ii) of Article 199 of the Constitution, the High Court could declare that the Holder of Public Office is not entitled, if the office in question of that post, it comes to the conclusion that incumbent has no authority to hold the same. The Office of the Chief Executive of PPL is a Public Office and for that reason they



are amenable of the jurisdiction of this Court under Article 199 of the Constitution. We are fortified on this issue by the decision rendered by the Honorable Supreme Court of Pakistan in the case of Salahuddin and 2 others v. Frontier Sugar Mills and Distillery Ltd. Takht Bhai and 10 others (PLD 1975 SC 244) and Barrister Sardar Muhammad vs. Federation of Pakistan and others (PLD 2013 Lahore 343). So the arguments of the learned counsel for the Respondent No 3 to 5 that Constitutional Petition is not maintainable under Article 199 of the Constitution of Pakistan against the Respondent No 3 is not sustainable in law and the Petition is maintainable under Article 199 of the Constitution and can be decided on merits.

11. The person invoking the jurisdiction under Article 199 of the Constitution of Pakistan is not required to fulfill the stringent conditions required for bringing himself within the meaning of aggrieved person. But, any person can move to a Court and challenge the usurpation or unauthorized occupation of a Public Office by an incumbent of that office and he is not required to undergo the stringent criteria to establish his locus-standi.

12. On merits, the Petitioners have mainly impugned the appointment of the Respondent No.3 on the premise, inter alia, that he does not qualify to hold the Public Office and that he is overage in terms of the Public Notice issued for appointment of the Managing Director /Chief Executive Officer in PPL.

13. We have gone through the contents of the Public Notice/Advertisement, published on 07.1.2015, which prima-facie shows that 55-57 years is maximum age required for the post of Managing Director /Chief Executive Officer, Pakistan Petroleum Ltd.; whereas the record shows that the Respondent No 3 was aged about 57 years 11 months and 17 days at the time of appointment, however, the Competent Authority waived off his upper age limit and the Respondent No. 1 issued the Notification dated 31.1.2015.

14. It is well settled principle of law that merit includes qualification for certain posts in Statutory/Public Sector Organizations. The power to prescribe or modify the said criteria vests in the Federal Government pursuant to Article 90 of the Constitution of Pakistan. The said Article vests exclusive power in the Executive to not only appoint, heads of Statutory Bodies, Autonomous Bodies, Semi-Autonomous Bodies, Regulatory Bodies, Public Sector Companies/State Owned Entities etc.; but also to make appointment on merits under the Acts / Ordinances and Rules framed thereunder. The Cabinet/Competent Authority is well within its right to prescribe criteria under Article 90 of the Constitution of Pakistan. Responsibility of fixing criteria of appointment of Public Sector Companies/State owned Entities Primarily falls on the Executive Branch of the State subject to the law. It is also settled law that Courts ordinarily refrain from interfering in policy making domain of the Executive.

15. In view of the above facts and circumstances of the case, we are constrained to observe that under Section 5 (2) of the Public

Sector Companies, (Corporate Governance) Rules, 2013 and under Section 2 and 3 of Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015 and schedule attached therewith, it is prerogative of the Federal Government to appoint a person of Public Sector Companies /State owned Entities in accordance with fitness and capability required for the post in accordance with law.

16. We are fortified with the decision rendered by the Hon'ble Supreme Court in the case of Ghulam Rasool vs. Government of Pakistan & others (PLD 2015 SC 6), wherein the Hon'ble Supreme Court has held in Paragraph No.9 that Courts ordinarily refrain from interfering in policy making domain of the Executive. Furthermore, in absence of any malafide or illegality, the Competent Authority's decision with respect to the appointment cannot be interfered with in Constitutional Jurisdiction of this Court, unless it is shown that the incumbent is not fulfilling the criteria set forth by the Competent Authority. Record reflects that the Federal Government advertised the posts of Managing Director/ Chief Executive Officer on 24.12.2014, three candidates were short listed, who were interviewed by the Special Committee constituted by the Board/Respondent No.4 on merits. Record further reflects that Respondent No.3 was 57 years, 11 month and 17 days old, whereas the age limit set forth for the candidates was 55-57 years. The Board assessed Respondent No.3 to be competent person for the post of Chief Executive Officer of PPL amongst all the candidates interviewed by the panel. Respondent No.1 supported the decision of the Board for appointment of Respondent

No.3 as Managing Director/ Chief Executive Officer, PPL on merits. So far as upper age limit of Respondent No.3 is concerned, a summary for the Prime Minister was floated on 29.01.2015, which was approved on 30.01.2015 by the Competent Authority. Consequently Respondent No.1 issued Notification dated 31.01.2015 for the appointment of Respondent No.3 as Managing Director/ Chief Executive Officer, PPL. No illegality and infirmity pointed out by the learned counsel for the Petitioners in above procedure. In our view, Petitioners have failed to produce any cogent material to substantiate and prove their claim.

17. We do not see any substance on the issue of age limit for the post of Managing Director, Pakistan Petroleum Ltd, as has been raised by the Petitioners. However, per learned DAG, the Cabinet Decision in the year 2007, it was decided to fix the upper age limit of 65 years for the post of any head of the Statutory, Autonomous Bodies and/or Public Sector Companies/State owned Entities.

18. In the light of facts and law discussed above, the appointment of the Respondent No. 3 does not seem to suffer from any inherent defect under the law, besides the Petitioners have also failed to point out any legal flaw in the appointment of the Respondent No 3, to warrant interference by this Court under Constitutional Jurisdiction. Therefore the instant Petition is inappropriate, and is dismissed along with listed applications.

19. Foregoing are the reasons for our short order dated 16.8.2017.

Karachi  
Dated: 08.09.2017

JUDGE

JUDGE