

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-1798 of 2017

Pakistan Stevedoring Conference
(Guarantee) Ltd.Petitioner

Versus

Director General (Ports & Shipping) & others.....Respondents

Date of hearing: 07.08.2017

Mr. Muhammad Shaiq Usmani, Advocate for the Petitioner-Company.

Mr. Bashir Ahmed, Advocate for Respondent No.3.

Mr. Ghulam Shabbir Baloch, Assistant Attorney General.

JUDGMENT

ADNAN-UL-KARIM MEMON,J:- Through the instant Petition, the Petitioner-Company has impugned Letter dated 08.03.2017 besides seeking directions to the Respondent No. 1 to issue Notification confirming the appointment of Tariq Haleem as a Member of Respondent No.3 that is, Karachi Dock Labour Board (hereinafter referred to as KDLB).

2. Brief facts of the case are that Petitioner-Company is a representative body of all Stevedores and is engaged in the business of loading and discharging Cargo on and from Ships; that Respondents No. 3 was established under Karachi Dock Labour Workers (Regulation of Employment) Scheme, 1973 (hereinafter referred to as the Scheme) for looking after the affairs of Karachi Dock Labour; that clause 4(3) (d) of the Scheme provides that Respondents No.3 shall consist of 14 members to be appointed by Federal Government, two of whom will be nominated by Petitioner-Company as its representatives; that Respondent No.3 requested the Petitioner-Company to forward names of nominees so that the same be forwarded to the Respondent No.1 for issuance of Notification for the next two terms; the tenure of two nominees of Petitioner-Company namely Kamran Fareed and Lt. Col. Muhammad Saleem expired on 19.11.2016; that Petitioner-Company unanimously nominated Tariq Haleem and Kamran Fareed as Member of Respondent No. 3 for the next term of 2 years vide Letter dated 11.11.2016; that Respondent No.3 forwarded the nominations of Petitioner-Company to the Respondent No.1 vide Letter dated 23.11.2016 for issuance of Notification; that later on Respondent No.3 advised Petitioner-Company to forward name of fresh nominee in place of Tarique Haleem on the assertion that he does not fall under the prescribed age limit i.e. 65 years in the light of Cabinet Decision mentioned in Letter dated 09.10.2007; that Petitioner-Company on 01.3.2017 filed Review Application to the Respondent No.2 but, Respondent No.2 instead of reviewing its decision issued impugned Notification

dated 8.3.2017. The Petitioner-Company being aggrieved by the said letter dated 08.03.2017 filed the instant Constitution Petition on 22.3.2017.

3. Mr. M. Shaiq Usmani, learned counsel for the Petitioner-Company has contended that as per Scheme or the Act no qualification or criteria of age for such nomination has been provided. Therefore, the Petitioner-Company has been nominating its Members for Respondent No.3 from time to time without any objection; that when names of nominees of Petitioner-Company were received by Respondent No.3, it forwarded the same to Respondent No.2 for issuance of Gazette Notification vide Letter dated 23.11.2017; that Respondent No.3 vide its Letter dated 07.02.2017 informed the Petitioner-Company that Respondent No.2 has declined to accept the nomination of Tariq Haleem as Member of Board of Respondent No.3 on the ground that he is over-age i.e. above 65 years of age. Per learned counsel this is hardly a ground to reject nomination of Petitioner-Company; that subsequently Petitioner through Letter dated 01.03.2017 asked the Respondent No.2 to review/reconsider its decision since the Petitioner-Company's nominee namely Tariq Haleem was selected by the General Body of the Petitioner-Company and was the most competent person for the position in question. But, Respondent No.2 through its Letter dated 08.03.2017 declined to notify Tariq Haleem as Member of Respondent No.3; that Scheme as well as the Act do not provide any qualification or criteria for nominee/Member of Respondent No.3 including age limit; that Respondent

No.2 has relied upon the Cabinet Division Letter dated 09.10.2007 which is not applicable to the case of Petitioner-Company; that said Cabinet Division Letter lays down the terms of appointment and age limit of Chairman and Members of Government Regulatory Authorities, Corporation, Autonomous Bodies, Commission etc., whereas Petitioner-Company is representative body of all Stevedores; that the said Cabinet Division Letter is internal Note in a department of the Government and has nothing to do with the case of Petitioner-Company; that even otherwise the nomination of two professional Members from Petitioner-Company is the requirement of law/scheme; that Respondent No.3 (KDLB) is required to manage affairs of Dock Labour who work in close coordination with Stevedores therefore, imposing condition of age limit is of no consequence as long as nominee is a professional Stevedore and is active in the business; that impugned Letter and subsequent actions on the part of Respondents are nullity in the eyes of law; that General Body of Petitioner-Company has approved the nomination of Tariq Haleem which confirms that the said nominee is a professional and is actively engaged in the business of Stevedore; that the act of Respondents No.1 and 2 is violative of fundamental right of the representative of the Petitioner-Company and the entire Stevedoring trade as enshrined in Article 18 of the Constitution.

4. Mr. Bashir Ahmed learned counsel for Respondent No.3 has argued that the instant Petition is not maintainable because it involves factual controversy which requires evidence. Besides, no

fundamental right of the Petitioner-Company is violated; that Petitioner-Company is at liberty to represent Stevedores subject to the right of freedom and its restrictions enshrined in the Constitution; that the Government of Pakistan has made a country wide policy to regulate the tenure, age and employment/reemployment of Chairman, Members, Trustees, Directors etc. to be appointed by Federal Government; that the representation of the Petitioner-Company is not denied but the same is to be regulated in accordance with the Government Policy; that Tariq Haleem whose age exceeds 65 years is not eligible to be appointed as Member of the Board of Respondent No.3; that such a restriction is within the competence of the Federal Government which has framed a policy for the entire country to regulate the appointment of Chairman, Members etc. of government controlled organizations.; that the Petitioner-Company can make fresh nomination meeting the criteria who will be notified by Respondents No. 1 and 2 in accordance with law.

5. Mr. Ghulam Shabbir Baloch, Assistant Attorney General appearing on behalf of Respondents No.1 and 2 supported the contention of Respondent No.3.

6. We have heard learned counsel for the parties and perused the material available on record.

7. First question which requires determination is whether impugned Letter dated 8th March 2017 issued by Respondent No.1

is based on Cabinet Division's Letter dated 09.10.2007 and can be interfered with in Constitutional jurisdiction?

8. We have noted that impugned letter is issued in compliance of Office Memorandum No. 3(25)/74-P.II (Vol.III) dated 01.02.2017, whereby approval has been sought from the Competent Authority for the nomination of Kamran Fareed (nominee of Petitioner-Company) as Member of the Board of Respondent No.3 for an additional period of two years with effect from 20.11.2016. Whereas, the nomination of Tariq Haleem has been declined on the ground that he does not fall under the prescribed age limit i.e. 65 years in the light of Cabinet Decision Letter dated 9.10.2007.

9. Record reflects that Petitioner-Company moved Review Application before Respondents No.1 and 2 which was declined on the ground that the nominee as proposed by the Petitioner-Company is overage. The contention of the learned counsel for the Petitioner is that under the law and the relevant rules framed thereunder, there is no requirement of age limit.

10. It is an admitted position that the Karachi Dock Labour Board is a statutory body established under Karachi Dock Labour Workers (Regulation of Employment) Scheme, 1973. It is a well-established principle of law that merit includes qualification for certain post/membership of a statutory body. The power to prescribe or modify the said criteria vests in the Federal Government pursuant to Article 90 of the Constitution. The said

Article vests exclusive power in the Executive to not only appoint heads of Statutory Body, Autonomous Body, Semi-Autonomous Body, Regulatory Bodies etc. but also to make appointment on merit under the Acts / Ordinances.

11. Perusal of Office Memorandum dated 01.02.2017 reveals that Tariq Haleem was born on 22.07.1949 hence, he does not meet the requisite age criteria for being a nominee of the Board of Respondent No.3. The said Office Memorandum is issued in accordance with Cabinet Division Letter No. 6/12/2007/RA/1 dated 09.10.2007.

12. We have noted that clause 4 (3) (c) of the Scheme clearly provides that two Members representing the Petitioner-Company are to be nominated by it but, the same does not forbid the Cabinet from specifying the criteria that has to be met by the said nominees. The Cabinet is well within its right to prescribe criteria under Article 90 of the Constitution. It is well settled law that responsibility of fixing criteria of appointment of Statutory Bodies primarily falls on the Executive Branch of the State.

13. It is also settled law that Courts ordinarily refrain from interfering in policy making domain of the Executive. We are fortified with the decision rendered by the Hon'ble Apex 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.

14. Furthermore, in absence of any malafide or illegality, the Competent Authority's decision with respect to the specification or modification of the criteria for selection of nominees of Respondent No.3's Board cannot be interfered with in constitutional jurisdiction of this Court. Even otherwise, the Petitioner-Company still retains the right to give name of a fresh nominee in place of rejected nominee subject to law.

15. In the light of above facts and circumstances of the case, we are of the view that there is no illegality, infirmity or material irregularity in the impugned Letter dated 8th March 2017 issued by the Respondent No.1. Consequently, the instant Constitutional Petition is dismissed along with listed applications.

16. These are the reasons of our short order dated 7.8.2017 whereby the instant Constitutional Petition was dismissed.

JUDGE

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