*HCJD/C-121*

**JUDGMENT SHEET**
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**

**Writ Petition No.1483 of 2022**

**Ghulam Murtaza**

***Versus***

**Federation of Pakistan, through Secretary Establishment Division, Islamabad and others**

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| **Petitioner by** | **:** | **M/s Sher Afzal Khan Marwat, Naila Noreen and Ch. Usama Tahir, Advocates.** |
| **Respondents by** | **:** | **Barrister Asghar Khan, Ali Roshan Gillani and Syed Buland Sohail, Advocates for Respondent No.2.**<br>**Mr. Haider Waheed, ASC and Barrister Syed Shehroz Bakhtiar, for Res. No.2 and 4 to 10.**<br>**Mr. Aqeel Akhtar Raja, Assistant A-G.**<br>**Mr. M. Sultan Rao, Section Officer, Estb. Div. Islamabad.** |
| **Date of Decision** | **:** | **24.03.2023** |

***Babar Sattar, J:-*** The petitioner has impugned the appointments of respondents No.4 to 10 by respondent No.2 for having been made in a non-transparent manner.

**2.** The learned counsel for the petitioner submitted that respondent No.2 has been created under the Special Technology Zones Authority Act, 2021 **("STZA Act")** under which the chairperson is to be appointed by the Prime Minister and the other public office holders are to be appointed in a transparent

manner in accordance with the provisions of PPRA rules. He submitted that respondent No.4 had already been appointed at the time that the advertisement for his position was issued, which is also evident from the pictorial evidence available in the public domain. He further stated that respondents No.5 to 10 have also been appointed in a non-transparent manner and lack the requisite qualifications for such posts. The criteria for appointments of respondents No.6, 8, 9 and 10 was not determined by the Federal Government or the Prime Minister's office, but by the authority under the STZA Act. A short period of seven days was provided for filing of applications, which included public holidays as well, so ample period was not provided for soliciting applications. No scrutiny committee was formed to evaluate the applications received and that formation of such committee was a requirement under the Esta Code, even if it was not an explicit requirement under the Act. The interview committee (that interviewed the shortlisted candidates) has not been identified in the response filed by the respondents and the record is also silent with regard to the manner in which scrutiny, shortlisting and interviewing process was undertaken.

**3.** Learned counsel for respondent No.2 and 4 to 10 raised initial objections to the maintainability of the petition. He submitted that respondent No.4 and 5 were not serving with respondent No.2 anymore and were not holding a public office within the meaning of Article 199(1)(b)(2) of the Constitution and the petition was therefore infructuous to the extent of their

appointment. He relied on ***Jawad Ahmad Mir Versus Prof. Dr. Imtiaz Ali Khan, Vice Chancellor, University of Swabi, District Swabi, Khyber Pakhtunkhwa*** ***(2023 SCMR 162)*** and ***Hafiz Hamdullah Vs. Saifullah Khan*** ***(PLD 2007 SC 52)*** for the proposition that it is only where a person is holding a public office that the Court in exercise of its authority under Article 199(1)(b)(2) of the Constitution ask him/her as to whether the office that he/she holds is backed by the authority of law. And it is to prevent the continuing exercise of authority of a public office by someone not authorized by law to do so that the writ of quo warranto seeks to prevent. The second objection to the maintainability of the petition was that respondents No.6, 8, 9 and 10 were not public office holders as the positions that they occupied were not statutory positions and they were not exercising any independent functions in connection with the affairs of the state. And consequently the positions against which they were serving within the hierarchy of respondent No.2 did not qualify as public offices for purposes of Article 199(1)(b)(2) of the Constitution. The third objection to the maintainability of the petition was that the petition had been filed by a person for a collateral purpose, given that the petition was motivated by *mala-fide* intent. In view of the credentials of the petitioner as an employee of BOL Media Network **("BOL")** the petition was not maintainable. He submitted that the petitioner had been an employee of BOL, which was seeking to have a license issued by respondent No.2 and an application in such regard had been filed by BOL before respondent No.2. BOL

then filed CP No.465/2022 before the learned Sindh High Court which issued a direction in such matter that the application be decided in accordance with law. When it became apparent to BOL that the application would not be approved by respondent No.2, BOL through its employees began to threaten the employees of respondent No.2 with litigation and started a media campaign to challenge and impugn the appointments of respondents No.4,5, 6, 8, 9 and 10. He submitted that at the time BOL filed its application for grant of a license before respondent No.2 the petitioner was Bureau Chief for BOL News Television. He submitted that Nabeel Jakhura, Executive Vice President, BOL was the point person on behalf of BOL pursuing the application with respondent No.2 and the respondent employees of respondent No.2. And copies of the complaints that were to be filed by BOL with NAB etc. as well as the petitions to be filed challenging the appointment of respondents No.4, 5, 6, 8, 9 and 10 were shared in draft form by Nabeel Jakhura on behalf of BOL with respondent No.5. He took the Court through a campaign run by BOL against respondent No.2 and its employees and the stories published from 18.04.2022 through 26.04.2022. He submitted that in the said stories the petitioner was the reporter who was seeking to project that the appointments of respondents No.4, 5, 6, 8, 9 and 10 were not in accordance with law. He also submitted that prior to the launch of such campaign a USB was also shared by BOL with respondent No.2 which contained programming that was yet to be aired on BOL and had been shared in advance with

respondent No.2 to blackmail its employees into granting the application filed by BOL. He submitted that the content of USB included a video clip which reflected that it was BOL's program which was never aired on BOL and could not have come in the possession of respondent No.2 unless it had been shared by BOL with respondent No.2.

**4.** After hearing initial arguments on the maintainability of the petition the Court asked the learned counsel for the petitioner whether the petitioner wished to withdraw the petition given that respondents No.4 and 5 were no longer office bearers and serious allegations had been raised with regard to the *bona-fide* of the petitioner. Learned counsel for the petitioner, on instruction, insisted that he wished to argue the case on grounds of maintainability as well as its merits. The Court then proceeded to hear the arguments on maintainability and merits.

**5.** Learned Assistant Attorney-General placed on record relevant summaries through which respondents No.4 had been appointed and took a position that pursuant to section 7(2) of the Special Technology Zones Authority Ordinance, 2020 **("STZ Ordinance")**, the Prime Minister being the competent authority appointed respondent No.4 on 09.01.2021 on an interim basis after the establishment of the Special Technology Zones Authority **("STZ Authority").** And subsequently a transparent procurement process was run after which respondent No.4 was reappointed on a permanent basis on 16.02.2021. He submitted that the rest of the appointments had been made by the STZ Authority under provisions of the STZA Act.

**6.** This Court agrees with the contention of learned counsel for the respondents that in the exercise of authority under Article 199(1)(b)(2) of the Constitution this Court is vested with the authority to ask a public office holder who is holding or purporting to hold a public office to justify under what authority of law such public office holder claims to hold the office-in-question. The purpose of a writ of quo warranto under Article 199(1)(b)(2) of the Constitution is to ensure that no person continues to wield authority in the name of the state when there is no power vested in such person by law to wield such authority. The paramount purpose is to give effect to Article 4 of the Constitution, which guarantees that individuals are to be dealt with in accordance with law. It is a settled matter that a public office holder can exercise only such authority as is vested in him or her by law. And no citizen can be prevented from doing something by a public office holder which is not prohibited by law or compelled to do anything which is not required by law.[1] In view of the above, the petition has become infructuous to the extent of respondents No.4 and 5.

**7.** This Court need not reproduce the arguments of the learned counsel for the parties with regard to the merits of the appointments or render its own opinion in relation thereto or even determine whether or not respondents No.6, 8, 9 and 10 are holding a public office for purposes of Article 199(1)(b)(2) of the Constitution, as the petitioner has failed to satisfy the Court

[1] *Messrs Gadoon Textile Mills. Vs Wapda And Others 1997 S C M R 641 and Pakistan Muslim League (N) Vs Federation of Pakistan PLD 2007 SC 642*

that he is a *bona-fide* petitioner who was, in filing this petition, not motivated by any insidious purpose but by the object of seeking to uphold rule of law in the public interest that it serves. It is settled law that a Court must at the outset satisfy itself that a petition of quo warranto has not been filed for any collateral purpose with an oblique motive. And that no one, who is seeking either to besmirch the character of a public official or to pursue any other insidious purpose by abusing the process of the Court, is allowed to avail the constitutional remedy of quo warranto and embarrass Court proceedings in the process. The relevant dicta of Courts in this regard are as follows:

**i.** It was held in *Jawad Ahmad Mir*[2] that

> *"10. At this juncture, it is quite interesting to quote an excerpt from the case of Dr. B. Singh v. Union of India and others, reported as (2004) 3 SCC 363, in which it was held that only a person who comes to the court with bona fide and public interest can have locus standi. Coming down heavily on busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit, either for themselves or as a proxy for others, or for any other extraneous motivation or for glare of publicity. The court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by*

[2] *Jawad Ahmad Mir vs Prof. Dr. Imtiaz Ali Khan 2023 S C M R 162*

*the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect."*

**ii.** It was held in *Ayaz Ahmed Khan*[3] *that:*

*"6. For instituting a writ of quo warranto , it is not necessary that any fundamental or other legal right of the petitioner is infringed. Any person is free to challenge the validity of an appointment to a public office. However, the Court must be satisfied that the petition is bona fide and not motivated by any malice against the person whose appointment is under challenge. A writ of quo warranto should be refused where it is an outcome of malice or ill-will. The Court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object."*

**iii.** It was held in *Nisar Khan Khattak*[4]*that:*

*"19. Granting relief in the nature of quo warranto is within the discretionary power of the superior Courts and this relief cannot be allowed as a matter of course, rather the conduct and the bona fides of the petitioner, the cause and the object of filing such petition is also of considerable importance, which is be examined. If the petition has been filed with some mala fide intent or ulterior motive and to serve the purpose of someone else, the remedy of quo warranto cannot be allowed to be a tool in the hands of the petitioner, who approached this Court with mala fide intentions and either had his own personal grudge and score to settle with the holder of a public office or is a proxy for someone else, who had a similar object or motive. The remedy of*

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[3] *Ayaz Ahmed Khan Vs Federation of Pakistan Through Secretary Ministry of Interior 2021 PLC(C.S.)1394*

[4] *Nisar Khan Khattak Haji Adam vs Director General (Admin), Pemra Headquarter, 2021 PLC (C.S.) 140*

*quo warranto should not be allowed to be used as a pressure tactic for purposes of restraining the respondent from performing functions and discharging their duties in accordance with the Constitution and the law. Writ of quo warranto can only be issued in exceptional cases. Relief of quo warranto should not be allowed as a matter of course, more so when the candidature of a candidate was duly scrutinized at the time of the scrutiny of his appointment to ascertain whether he was qualified or disqualified in terms of the Constitution and the law. The Court is not required to go into the merits of the case and should summarily dismiss the petition on the basis of lack of bona fides and extraneous motives of the petitioner and on account of the petition being frivolous."*

**iv.** It was held in *Muhammad Hanif Abbasi*[5] *that:*

*There can be no cavil with the principle that to grant the relief in the nature of quo-warranto is within the discretionary power of the superior Courts, it should not be allowed as a matter of course, rather the conduct and the bona fides of the relator, the cause and the object of filing such petition is of considerable importance and should be examined; it should be ascertained if the petition has been filed with some mala fide intent or ulterior motive and to serve the purpose of someone else. We are of the considered view that quo warranto remedy should not be allowed to be a tool in the hands of the relators, who approach the Court with mala fide intentions and either have their own personal grudges and scores to settle with the holder of the public office or are a proxy for someone else who has a similar object or motive.*

**v.** It was held in *Ghulam Shabbir*[6] *that:*

*"7. Insofar as maintainability of the Petition is concerned it would be seen that per settled law a writ of quo warranto is not issued as a matter of course. The Court can and will enquire into the*

[5] *Muhammad Hanif Abbasi Vs Jahangir Khan Tareen P L D 2018 Supreme Court 114*

[6] *Ghulam Shabbir Vs Muhammad Munir Abbasi P L D 2011 Supreme Court 516*

*conduct and motive of the petitioner. However, no precise rules can be laid down for the exercise of discretion by the Court in granting or refusing the same and each aspect of the case is to be considered. There is also no cavil with the argument that in such cases it is not necessary that the petitioner be an aggrieved person and further that if it is established that the petitioner has approached the Court with ulterior motive, mala fide intention etc. relief can be declined.*"

**vi.** It was held in *Dr. Azim-Ur-Rehman Khan Meo*[7] that:

"*6. It, however, must not be lost sight of that grant of relief in writ jurisdiction irrespective of its kind, is discretionary which is required to be exercised judiciously but the High Court would be fully competent while exercising such discretion to test the bona fides of the relator to see if he has come with clean hands. In this regard reference can be made to Federation of Pakistan v. Muhammad Saifullah Khan PLD 1989 SC 166 and Federation of Pakistan v. Muhammad Saifullah Khan 1989 SCMR 1996. In case it is determined that the appellant had approached the Court with ulterior motive, mala fide intention and as an instrument of others, the relief can be declined.*"

**vii.** It was held in *Qazi Hussain Ahmad*[8] that:

*"Although strictly speaking the principle of laches does not apply to the writ of quo warranto but the Court cannot close its eyes as regards the conduct of the petitioners appearing before it, which militates against the bona fides of the petitions."*

**viii.** It was held in *Dr. Kamal Hussain*[9] that:

*"A writ of quo warranto in particular is not to issue, as a matter of course on sheer technicalities on a doctrinaire approach. In the*

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[7] *Dr. Azim Ur Rehman Khan Meo vs Government of Sindh 2004 S C M R 1299*

[8] *Qazi Hussain Ahmad, Ameer Jamaat-e-Islami Pakistan Vs General Pervez Musharraf P L D 2002 Supreme Court 853*

[9] *Dr. Kamal Hussain vs Muhammad Sirajul Islam P L D 1969 Supreme Court 42*

> *present case, considering all the circumstances I cannot escape the feeling that Mr. Siraj-ul-Islam is not entirely playing his own game, for high altruistic motives, and that he has instituted the writ petition not so much for the vindication of any public right or the redress of a public wrong as to redeem the discomfiture of the defeated candidates, and to fight their battle on another front which some of them had already waged by the process of the election petitions within its limitations. …I feel very strongly that it was not at all fit case for the issuance of a writ of quo warranto by the High Court."*

**8.** A perusal of the material that has been placed before the Courts establishes that the petitioner was an employee of BOL at a time when BOL was seeking the issuance of a license from respondent No.2. For purposes of seeking the issuance of a license by respondent No.2, BOL initiated litigation before the Sindh High Court. Further to secure the issuance of such license employees of BOL issued threats to respondent No.2 and its employees, who are respondents within petition, and had the audacity of sharing draft complaints and draft petitions which were to be filed against respondent No.2 and its employees. The petitioner personally participated in a media campaign impugning the actions of respondent No.2 and its employees. And most striking is the video content which was purportedly shared by one Nabeel Jakhura at the behest of BOL with respondent No.2, which was a package put together by BOL to impugn the appointments of respondents No.4 and 5 and was reportedly never telecast on BOL. The respondent employees of respondent No.2 have filed affidavits in support of their allegations of blackmail on part of BOL and the petitioner's role as a facilitator in such enterprise. The petitioner has however

chosen not to file any counter affidavit. The transcripts of news programs run on BOL on 18.04.2022 and 19.04.2022 have also been placed on record in which the petitioner as Bureau Head of BOL was reporting on the allegation that the STZ Authority had hired employees without tests, interviews and approval of the Federal Government, which allegations constitute the subject matter of the instant petition as well.

**9.** In view of all this material, this Court is not satisfied that the petitioner not acting as a proxy for a campaign run by BOL against respondent No.2 and the respondents serving with respondent No.2 upon being told that the license that BOL has sought from respondent No.2 was not to be issued. This Court therefore finds that the petition has not been filed by a *bona-fide* petitioner or in the interest of ensuring that appointments to public offices are made in accordance with law. This Court fears that this petition may have been filed to give effect to threats issued by BOL and its employees against respondent No.2 and its employees upon respondent No.2's decision not to issue a license sought by BOL. This Court therefore finds that the petition is not maintainable for lack of *bona-fide* on part of the petitioner. The Court further finds that the petition is not maintainable against respondents No.4 and 5 as the said respondents are no longer holding any office with Respondent No.2. The Court however has not adjudicated the legality or lack thereof of the appointments of other respondents who are in the service of respondent No.2, as there is no need to indulge in

such exercise after the finding that the petition is not maintainable.

**10.** In view of the above, the instant petition is ***dismissed*** being not maintainable. The counsel for respondent No.2 has filed its cost of litigation statement and has claimed an amount of Rupees 1,100,500 PKR as legal fee, travel and accommodation expenses, which the Court finds to be reasonable. The petitioner will pay the actual cost of litigation in the amount of Rupees 1,100,500 PKR to respondent No.2 within a period of thirty days. Learned counsel for petitioner will file a certificate with the Deputy Registrar (Judicial) of this Court stating that the order granting costs has been complied with by or before the expiry of 30-day period.

**(BABAR SATTAR)**
**JUDGE**

***Approved for reporting.***

*M.A. Raza*