Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABADHIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

WRIT PETITION NO. 2499 OF 2015

Chaudhry Asghar Ali, Advocate

Vs

Noor ul Haq, Member (Finance), Oil and Gas Regulatory Authority, etc.

PETITIONER BY:	Dr. Atique Tahir, Advocate
RESPONDENTS BY:	Syed Nazar Hussain Shah, Assistant Attorney General. Khawaja Azhar Rashid, Advocate for respondent No.1. Mr. Shafqat Ali, Section Officer, Cabinet Division.
DATE OF HEARING**:**	26.03.2021.

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BABAR SATTAR, J.- Through this petition the appointment of respondent No.1 as Member (Finance), Oil and Gas Regulatory Authority (***"OGRA")*** under section 3(8)(c) of the Oil and Gas Regulatory Authority Ordinance, 2002 (***"OGRA Ordinance"***) by notification dated 22.07.2015 has been challenged.

2. Learned counsel for the petitioner stated that section 3(7) of the OGRA Ordinance requires that "*the Member Finance shall be a person who holds an appropriate degree in the relevant field and is an experienced, eminent professional of known integrity and competence with a minimum of twenty years of related experience in the field of corporate finance or accounting"* and that advertisement for the post of Member (Finance) published on

11.03.2015 reiterated the same criteria. The learned counsel submitted that respondent No.1 is not a person of known integrity as he is allegedly involved in embezzlement of money and misuse of powers. He relied on *Muhammad Yasin vs. Federation of Pakistan through Secretary, Establishment Division, Islamabad* and others (PLD 2012 SC 132) to submit that the august Supreme Court had ordered National Accountability Bureau to initiate an inquiry against officials of OGRA involved in issuance of various cheques, including respondent No.1. The learned counsel further submitted that respondent No.1 has been drawing an amount in lieu of car maintenance over and above his entitlement which establishes his lack of integrity. He stated that respondent No.1 is guilty of expressing political view point through Social Media and such political messaging exhibits his partisan and political affiliation is also a manifestation of his lack of integrity and a ground for his disqualification as Member (Finance) OGRA. The learned counsel relied on *Dr. Farooq Hassan vs. Mumtaz Ahmed Khan* (1988 CLC 578) to argue that respondent No.1 does not qualify as a person of eminence as defined in the said case.

4. Learned counsel for respondent No.1, on the other hand, stated that the petition is infructuous as it was filed on 28.07.2015 challenging the appointment of respondent No.1 under notification dated 22.072015 whereby the petitioner was appointed as Member (Finance) OGRA for a period of two years which was expired in July 2017. He submitted that respondent No.1 is presently serving on the basis of his reappointment as Member (Finance) under section 3(8)(c) of the OGRA Ordinance which was made in July 2017 and that the notification of reappointment of respondent No.1 was never

challenged. Relying on *Jahanzaib Malik v. Balochistan Public Procurement Regulatory Authority through Chairman Board of Directors and others* (2018 SCMR 414), he submitted that this Court cannot take *suo motu* cognizance of reappointment when the same has not been impugned through an amendment in the instant petition or by filing a fresh petition. He further stated that the petitioner has not impleaded OGRA which is a necessary party and that this petition is also not maintainable in view of the same. The learned counsel further stated that the petitioner has not come to the Court with clean hands as he continues to file frivolous petitions against OGRA and has filed another petition against respondent No.1 as well in order to interfere with the affairs of the OGRA and bring its administration under pressure through such litigation and that this petition is liable to be dismissed for being filed with malafide intent, ulterior purposes and relied on Dr. Azim ur Rehman Khan Meo v. Government of Sindh and another (2004 SCMR 1299). On merits, the learned counsel submitted that there is no allegation in the petition that respondent No.1 lacks the required qualification or experience for the post of Member (Finance) OGRA and that respondent No.1 possesses the qualification ACMA and FCMA in Finance/Accounts and has work experience of thirty years as against the requirement of twenty years stated in the advertisement for the post. He submitted that respondent has served OGRA for a period of twelve years with distinction in senior accounts and finance positions. He further stated that there is no allegation against respondent No.1 that his appointment was a consequence of nepotism or misuse of authority and that respondent No.1 was not the first choice for the office of Member (Finance) OGRA and was

instead offered the position when the person who was first selected for the post declined to accept the position. The learned counsel also submitted that the allegation of the petitioner that respondent No.1 was subject of any inquiry or criminal proceedings pending before the National Accountability Bureau is false and there is no mention of respondent No.1 in Muhammad Yasin. He lastly submitted that question of eminence of a candidate requires subjective determination and formation of opinion, which is a responsibility vested by law in the competent authority, and it is not for this Court to second guess a competent opinion by such authority in the absence of allegations of procedural impropriety or malafide.

5. The learned Assistant Attorney General submitted on behalf of respondents No. 2 and 3 that selection process that culminated in the appointment of respondent No.1 was in accordance with law. That respondent No.3 received 26 applications in response to the advertisement for the post of Member (Finance) OGRA. Shortlisting committee was duly constituted which shortlisted six applicants including respondent No.1. That on 13.05.2015 meeting of selection committee was convened and the committee interviewed the shortlisted candidates and recommended three names for consideration of the Prime Minister for appointment of Member (Finance) OGRA and that respondent No.1 was placed at serial No.2 of such list. That in accordance with the summary moved by respondent No.3, the Prime Minister was pleased to approve the appointment of Mr. Anwar ul Haq, who was at Sr. No.1, from the panel proposed by respondent No.3. A notification dated 24.06.2015 was issued appointing Mr. Anwar-ul-Haq as Member (Finance) OGRA. Mr. Awar-ul-Haq, however, declined the offer and

consequently respondent No.3 once again sought approval of the Prime Minister for appointment of Member (Finance) OGRA from amongst the remaining candidates from the panel proposed by respondent No.3 in which respondent No.1 was then first in the order of merit. And upon grant of approval for appointment of respondent No.1 he was appointed by notification dated 22.07.2015. The learned Assistant Attorney General then submitted that respondent No.1 fulfilled the criteria for the post of Member (Finance) OGRA and was appointed in accordance with the due process of law after seeking relevant clearance reports from the State agencies as well as the employer of respondent No.1 and that at the time of his appointment there were no inquiries pending against respondent No.1. In view of his submissions, he sought that the petition be dismissed.

6. In rebuttal, the learned counsel for the petitioner stated that reappointment of respondent No.1 in July, 2017 was actually an extension and need not to be challenged through a fresh petition. He further submitted that the petitioner is a public spirited individual and respondent No.1 has failed to establish any ulterior motive for the filing of the instant petition that is being attributed to him.

7. Let me first consider the question of maintainability in view of *Jahanzaib Malik.* In this appeal against the judgment of learned Balochistan High Court whereby it had set aside the appointment of an officer appointed as Director, Balochistan Public Procurement Regulatory Authority, who was subsequently granted two years extension, the august Supreme Court while setting aside the judgment held the following:

> *"In addition, we notice that the 2 years contract of the petitioner expired on 08.04.2015. In consequence of which the Constitutional Petition as originally filed was rendered infructuous. The petitioner was granted a further extension of 2 years vide office order dated 29th August, 2017 with effect from 08.04.2017. The said office order was not challenged by Respondent No.3 either through amendment in the Constitutional Petition or by filing a fresh petition. By taking Suo Motu Notice of such extension, the High Court appears to have exceeded its jurisdiction for reasons which are not legally sustainable."*

8. Section 3(8)(c) of the OGRA Ordinance pursuant to which respondent No.1 was initially appointed for a period of two years and subsequently reappointed states the following:

> *"The Member Finance shall be appointed by the Federal Government for an initial term of two years shall be eligible for reappointment for a term of four years."*

9. In view of the clear language of section 3(8)(c), it is patent that the initial period of appointment of respondent No.1 which was challenged in the instant petition expired in 2017. The petitioner was reappointed in July 2017 and such reappointment has not been challenged by the petitioner. In view of the ratio of Jahanzaib Malik, this Court has no *suo motu* power to consider the legality of an appointment that does not form part of the lis pending before it as the period of appointment under notification dated 22.07.2015 stands expired and the notification of reappointment in July 2017 has never been challenged. The instant petition is infructuous in view of Jahanzaib Malik. Even on merits, there is no allegation in the petition that the petitioner lacks the requisite qualification or experience to be appointed as Member (Finance) OGRA. The petitioner has made bald allegations impugning the integrity of

respondent No.1 which are not backed by any material and has alleged that criminal investigation is pending against respondent No.1, which is also not backed by the record of file. The allegation that respondent No.1 has indulged in political messaging on social media can hardly be treated as a basis for disqualification in view of Article 19 of the Constitution, which protects the right of every citizens to freedom of speech and expression.

10. Learned counsel for the petitioner has failed to identify any provision of law that respondent No.1 has breached by expressing his opinions on social media and has also not produced any determination by a competent authority or a court of competent jurisdiction holding that respondent No.1 suffers from lack of integrity. The petitioner essentially wishes this Court to step into the shoes of executive authorities and override an opinion formed by the Federal Government regarding the integrity and eminence of respondent No.1. It is settled law that in exercise of judicial review powers the High Court does not second guess exercise of discretion by competent executive authorities unless it is established through record that exercise of discretion suffers from illegality, irrationality or procedural impropriety. The petitioner has failed to make out a case on any such basis.

11. Further the petitioner's reliance on Muhammad Yasin is also misguided. In Muhammad Yasin the august Supreme Court had laid out a test to determine the validity of appointment process in the following terms:

> *"To test the validity of the appointment process in this case, it would be useful to adopt a test based on the following considerations:*
>
> > *(a) whether an objective selection procedure was prescribed;*
> >
> > *(b) if such a selection procedure was made, did it have a reasonable nexus with the object of the whole exercise, i.e. selection of the sort of candidate envisaged in section 3 of the Ordinance;*
> >
> > *(c) if such a reasonable selection procedure was indeed prescribed, was it adopted and followed with rigour, objectivity, transparency and due diligence to ensure obedience to the law.*

The petitioner has failed to make out a case that appointment of respondent No.1 falls foul of the aforesaid test laid out by the august Supreme Court.

12. In view of the above, the instant petition is **dismissed.** Respondent No.1 has not filed details of his cost of litigation pursuant to section 35(1) of the Code of Civil Procedure, 1908 and consequently this Court is unable to grant the actual cost of the litigation to respondent No.1. As this is a petition in the nature of quo warranto filed by a citizen who claims to be inspired by considerations of public interest, this Court is taking a lenient view by not ordering costs in its own discretion under section 31(5)(iii) of CPC.

(BABAR SATTAR)
JUDGE

Saeed.