Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No. 125 of 2014

Federation of Pakistan, etc.
Vs
Mansoor Muzaffar Ali.

APPELLANTS BY: Mr. Yasar Aman Khan, Advocate for the Appellants.
RESPONDENT BY: Mr. Abdur Rehman Siddique for the respondent.
DATE OF HEARING**:** **28-10-2014**.

ATHAR MINALLAH, J.- This Intra Court Appeal assails judgment dated 13-02-2014 (hereinafter referred to as the "Impugned Judgment") whereby the appellants have been directed to consider the respondent for a second term in accordance with Section 3 (8)(b) of the Oil & Gas Regulatory Authority Ordinance, 2002 (hereinafter referred to as the "Ordinance").

2. Briefly stated, the respondent was appointed as Member (Gas) in the Oil & Gas Regulatory Authority (hereinafter referred to as the "Authority") vide notification dated 17-08-2010. The appointment was for a period of three years, which was completed on 29-08-2013. During his tenure, investigations were initiated following the direction of the august Supreme Court in the case of *"Muhammad Yasin vs The Federation & others",* PLD 2012 SC 132. The respondent was arrested on 16-05-2012 and released on bail on 03-09-2012. On the advice/instruction of the National Accountability Bureau, the respondent remained dysfunctional till the expiry of the term.

Reference No.1/2013 filed by the NAB against the respondent is pending in the NAB Court, Islamabad.

3. The respondent, through a written request, sought re-appointment for the second term as provided in Section 3(8)(b) of the Ordinance. The request was declined vide letter dated 30-08-2013. The said letter was assailed by the respondent through W.P.No.3389/2013 by invoking the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "Constitution"). The said petition was allowed by the learned Single Judge in Chamber through the impugned judgment.

4. As the Authority remained dysfunctional for a considerable period, the respective Members, Gas and Finance were appointed against vacant positions vide notification dated 06-12-2013. The said appointments were made through an open and transparent competitive process. The Member, (Gas) assumed the charge on 23-12-2013. The respondent neither applied in response to the advertisement nor challenged the process or the appointment made vide notification dated 06-12-2013.

5. The learned counsel for the appellants contend that the learned Single Judge misinterpreted the provisions of the Ordinance, particularly Section 3(8)(b) thereof. It is stated that the second term cannot be construed as a continuation of the first term requiring a mere secretarial act. The case of the respondent was considered by the Performance Evaluation Committee, constituted vide OM No.F. 3(7)R.4/98-Vol-II/20079B), dated 11-04-2007, which did not approve the re-appointment of the petitioner for a second term, therefore, he was accordingly informed vide letter dated 30-08-2013. It is stressed by the learned counsel that the petition had become infructuous when

the respondent failed to challenge the appointment of Member (Gas) vide notification dated 06-12-2013. It is, therefore, urged that the impugned judgment may be set-aside as at this stage, compliance with the direction will be a futile exercise.

6. On the other hand learned counsel for the respondent states that the impugned judgment is in accordance with law as the letter dated 30-8-2013 was non speaking and refusal for the re-appointment was in violation of Section 3(8)(b) of the Ordinance which guarantees a second term of four years.

7. We have heard the learned counsels and perused the record with their able assistance.

8. It is admitted that the respondent did not challenge the process initiated for selection of Member, (Gas) after the completion of his first term. The notification dated 06-12-2013, appointing Member (Gas) was also not assailed nor an attempt was made by the respondent to amend his petition. The events subsequent to filing of the petition had rendered the prayer sought therein as infructuous. The respondent failed to respond to the advertisement inviting applications for appointment of Member (Gas) after completion of his first term. There is sufficient material placed on record which suggests that there existed cogent grounds to refuse the request made by the respondent for his re-appointment.

9. The contention of the learned counsel for the respondent, that the word ‘eligible’ in Section 3(8)(b) of the Ordinance creates a right in an incumbent Member to be re-appointed, is misconceived. The legislator has consciously used the word eligibility for “re-appointment”, and it merely creates a right to be considered.

10. By no stretch of the imagination can it be construed that eligibility for re-appointment guarantees continuation of the first term of three years for another term of four years. The two terms are distinct and separate. The re-appointment for a second term of four years is subject to various factors which the appointing authority has to take into consideration. In the present case, it is not denied by the respondent that on account of a pending reference in the NAB Court, Islamabad, he was restrained from carrying out his functions or exercising powers as Member (Gas). This situation rendered the Authority, an important Regulatory body established under a statute, as dysfunctional. This alone was sufficient to refuse re-appointment of the respondent. Needless to say that in such a situation a reasonable and prudent person would not have made a request for re-appointment. Keeping a statutory regulatory authority dysfunctional is indeed not in public interest as it leads to violation of the fundamental rights of the public at large.

11. As already noted, the respondent failed to challenge the process initiated for the appointment of Member (Gas) or the notification dated 06-12-2013. This obviously created rights in favour of the person selected and duly appointed, which cannot be taken away without due process of law and through appropriate proceedings before a competent forum. It will, therefore, be a futile exercise for the Appellants to consider the respondent for re-appointment at this stage.

12. For what has been discussed above, this Intra Court Appeal is allowed and the judgment dated 13-02-2014, passed in W.P.No.3389/2013, is accordingly set-aside.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

(ATHAR MINALLAH)
JUDGE

Asif Mughal/*