JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1638/2017
Muhammad Yasin
Versus
Federation of Pakistan through Secretary, Cabinet Division and others

Date of Hearing:	14.01.2019
Petitioner by:	Dr. Atique Tahir and Ch. Asghar Ali, Advocates.
Respondents by:	Mr. Muhammad Nadeem Khan, learned Assistant Attorney-General, Mr. Shahid Ahmad, S.O. RA-II Cabinet Division. Mr. Muhammad Rizwan ul Haq E.D. Litigation OGRA/respondent No.3, M/s Muhammad Sajjad Abbasi and Qausain Faisal Mufti, Advocates for respondent No.4.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Muhammad Yasin (who retired as Executive Director, Oil and Gas Regulatory Authority), impugns notification dated 21.04.2017 issued by the Establishment Division, whereby Dr. Abdullah Malik (respondent No.4) was appointed as Member (Oil), Oil and Gas Regulatory Authority ("O.G.R.A.") in terms of section 3(8)(b) of the Oil and Gas Regulatory Authority Ordinance, 2002, ("O.G.R.A. Ordinance") for a period of three years.

2. Learned counsel for the petitioner submitted that section 3(5) of the O.G.R.A. Ordinance provides that Member (Oil) 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 oil, including the transportation thereof; that "authority" has been defined in section 21(i) of the O.G.R.A. Ordinance to mean the Chairman and three Members, one of whom is Member (Oil); that in response to advertisement dated 17.07.2015, issued by O.G.R.A., the petitioner applied for appointment as Member (Oil); that after the petitioner was

interviewed, he was one of the candidates recommended to be appointed against the said post; that thereafter, the said competitive process became the subject matter of writ petition No.2935/2015 and I.C.A.No.475/2015; that after the said petition and appeal had been disposed of, the Federal Government instead of appointing one of the recommended candidates, issued a fresh advertisement inviting applications for appointment as Member (Oil); that aggrieved by the said advertisement, the petitioner filed writ petition No.3383/2016 which was allowed, vide judgment dated 17.02.2017, with the direction to the respondents therein to take a decision regarding the earlier competitive process; and that after the disposal of the said writ petition, the Federal Government appointed respondent No.4 as Member (Oil) even though he did not have the experience required in section 3(5) of the O.G.R.A. Ordinance.

3. Learned counsel for the petitioner drew the attention of the Court to respondent No.4's bio-date/C.V. attached with the written comments of the Cabinet Division and submitted that respondent No.4 lacked the required experience for appointment as Member (Oil). Furthermore, it was submitted that reports from the National Accountability Bureau ("N.A.B.") and the Federal Investigation Agency ("F.I.A.") should have been called before his appointment as Member (Oil). Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. On the other hand, learned counsel for respondent No.4 submitted that the petitioner has not pointed out any procedural irregularity or violation of the O.G.R.A. Ordinance in making respondent No.4's appointment as Member (Oil); that the credentials of respondent No.4 were far better than those of the petitioner for appointment as Member (Oil); that the petitioner's entire experience has been within O.G.R.A. whereas respondent No.4 has had varied National and International experience in the Oil Sector; that respondent No.4's credentials were examined by the Selection Committee and the Appointing Authority before he was appointed as Member (Oil); and that respondent No.4 had

the requisite qualification to be appointed as Member (Oil). Learned counsel for respondent No.4 prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. The term "Authority" has been defined in section 2(1)(i) of the O.G.R.A. Ordinance to mean the Oil and Gas Regulatory Authority established under section 3 of the O.G.R.A. Ordinance. Section 3(3) of the O.G.R.A. Ordinance provides *inter-alia* that the Authority shall consist of a Chairman and three additional Members out of whom one shall be designated as Member (Gas), one as Member (Oil) and one as Member (Finance). As regards the criteria for appointment as Member (Oil), the same is set out in section 3(5) of the O.G.R.A. Ordinance which is reproduced herein below:-

> ***"(5) The Member Oil 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 oil, including the transportation thereof."***

7. The record shows that the post of Member (Oil) fell vacant on 04.07.2014 on the completion of the tenure of Mr. Sabir Hussain. The said post was advertised on a few occasions but the process could not culminate in the appointment of Member (Oil). On 17.07.2015, the said post was advertised for the fourth time. Interviews of the shortlisted candidates were held on 22.09.2015. The Selection Committee recommended the following candidates in order of merit:-

i. **Mr. Zainulabideen Qureshi (Intervener)**
ii. **Mr. Muhammad Yasin (petitioner)**
iii. **Dr. Abdullah Malik (respondent No.4)**

8. In the process of verifying whether there was any blemish on the integrity of the above-named candidates, the N.A.B., vide letters dated 09.12.2015 and 13.04.2016, informed that certain allegations had been raised by the petitioner against the Intervener. Since the allegations made by the petitioner had not culminated in any findings against the Intervener, the Selection

Committee, in its meeting dated 19.04.2016, decided to seek the approval of the Prime Minister for appointment of one of the shortlisted candidates. However, the Prime Minister approved the Cabinet Division's proposal to re-advertise the said post. Consequently, on 04.09.2016, the post of Member (Oil) was advertised for the fifth time.

9. Aggrieved by the re-advertisement of the said post, the petitioner filed writ petition No.3383/2016 before this Court. This writ petition was allowed, vide judgment dated 17.02.2017, with the direction to the respondents therein not to take further action with regard to the advertisement dated 04.09.2016 without making a decision regarding the earlier process. Thereafter, on 17.03.2017, the Cabinet Division submitted a summary to the Prime Minister seeking the approval for the appointment of one of the three shortlisted candidates as Member (Oil). On 07.04.2017, the Prime Minister approved the appointment of respondent No.4 as Member (Oil). On 18.04.2017, the Cabinet also approved the said appointment. Consequently, vide impugned notification dated 21.04.2017, respondent No.4 was appointed as Member (Oil).

10. Learned counsel for the petitioner did not come-up with any material to cast any blemish on respondent No.4's integrity. The petitioner's sole ground for challenging respondent No.4's appointment is that respondent No.4 did not have an experience of twenty years in the Oil Sector. Now respondent No. 4's experience which was taken into consideration before appointing him as Member (Oil) is set out in **"Schedule-A"** hereto.

11. It is well settled that this Court cannot put itself in place of the Selection Committee or the Appointing Authority and re-evaluate the credentials of the shortlisted candidates and after doing so, substitute its decision with that of the Selection Committee or the Appointing Authority in the absence of any violation of the law in the selection process. After going through the details of respondent No.4's experience which was examined by the Appointing Authority, I am not persuaded by the argument of learned counsel for the petitioner that respondent No.4 lacked

the experience required in section 3(5) of the O.G.R.A. Ordinance to be appointed as Member (Oil).

12. In the case of Muhammad Yasin Vs. Federation of Pakistan (PLD 2012 S.C. 132), the Hon'ble Supreme Court held *inter-alia* that autonomous institutions such as O.G.R.A. can function effectively and efficiently only if their autonomy is respected. Furthermore, it was held that such autonomy is only possible when appointments to key positions in regulatory bodies, such as Members of the regulatory bodies, are made in a demonstrably transparent manner. As mentioned above, learned counsel for the petitioner has not been able to point out any procedural irregularity or violation of the statute in the selection process culminating in respondent No.4's appointment as Member (Oil).

13. I have gone through the earlier writ petition (i.e. W.P.No.3383/2016) filed by the petitioner before this Court. As mentioned above, the said writ petition was filed when it was decided to re-advertise the post of Member (Oil) for the fifth time. The contents of the said writ petition show that the petitioner was well aware that the Selection Committee had considered the petitioner as well as respondent No.4 as eligible for appointment as Member (Oil). Despite this, the petitioner chose not to assail respondent No.4's eligibility for appointment as Member (Oil) in the said writ petition. It is only after the process culminated in respondent No.4's appointment as Member (Oil) that the petitioner decided to question his eligibility and qualifications in the instant writ petition. I am of the view that since the petitioner remained silent on respondent No.4's eligibility when writ petition No.3383/2016 was filed, he is now estopped from challenging respondent No.4's eligibility.

14. Even otherwise, although I do not feel the need to re-state respondent No.4's employment history ever since 1984 but suffice it to say that the said employment history (which has been filed by the Cabinet Division along with its written comments) does not lead me to take the view that respondent No.4's experience fell short of the requirement in section 3(5) of the

O.G.R.A. Ordinance. The petitioner has not disputed the correctness or the authenticity of respondent No.4's said employment history. Consequently, I do not find any merit in this petition which is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019.

(JUDGE)

*Qamar Khan**

Uploaded By : Engr. Umer Rasheed Dar

SCHEDULE-A

Employment History:

Global Engineering Team Ltd **September 2013 –Present**
Project and Engineering Director

EPCM of 50 million litres per annum Used Lube oil Refinery using Intensified Thin Film Evaporator Vacuum Packed Bed Distillation in Jeddah KSA.

Hybrid Gasification Ltd **2007 – Present**
Associate Director

Developed Novel Inverted Torch Rotary Grate Gasification system using Biomass and Coal – Installed demonstration facility in Hattar KPK
Worked on several green power low carbon technologies.

Jacobs Ltd **August 2009 – Present**
Principal Engineer – Combustion Processes

- **As part of power project team based in Glasgow Office: To carry out feasibility and FEED studies to support Power Projects group on Energy Recovery from Coal and Biomass projects to be installed in UK and abroad.**
- **Provided process engineering and layout study support of multi-billion pound ferticlizer complex in Saudi Arabia.**
- **Liaised with Business Development Head to identify clients' specialist requirements on project or problem definition.**
- **Participated in visiting potential clients in order to technically clarify the client's requirements and to add value to the business effort.**
- **Reviewed Design References and other materials that promote application of best practices on projects.**

Simon Carves Ltd **Nov 2005 – August 2009**
Principal Engineer – Process

- **Leading a team of engineers: To carry out feasibility and FEED studies to support Green Technology group on Energy Recovery from Biomass projects to be installed in UK and abroad.**
- **Development of FED/FEED and process design of waste fuel sorting and handling , steam treatment, recycling processes, biomass/coal gasification, gas and water/effluent treatment, utilities and power generation systems, this includes Technology Selection/Evaluation, Concept and Detail Design, Project Cost and Risk Assessment etc.**
- **Conduct technology reviews and selection and help due diligence process and perform Project Risk Management using @Risk at pre-bidding proposal and pre- EPC contract stages.**
- **Liaised with Business Development Head to identify clients' specialist requirements on project or problem definition.**
- **Participated in visiting potential clients in order to technically clarify the client's requirements and to add value to the business effort.**
- **Reviewed Design References and other materials that promote application of best practices on projects.**

WTE Ltd. **Aug 2000 – Nov 2005**
Technical and Projects Manager

- **Managed various projects on the design, manufacturing, supply, installation and commissioning of Waste to Energy Gasification Plants.**
- **Provided technical support to clients on energy generation, waster pyrolysis, gasification and incineration. Handled technical queries, prioritizing and solving them to delegating and co-ordinating work in the team.**
- **Prepared plans to install CHP systems. Supervise product development work.**
- **Conducted feasibility studies, optioneering, Process Risk Assessments and Participated in all stages of design HAZOPS Supervise product development work and run safety training workshops.**

PB Power Ltd **June 2000 – July 2000**
Feasibility Study on EfW facility

Entec UK Ltd. **Jan 1998 – June 2000**
Senior Process Consultant

- **Process design of sludge gasification to energy plant as a lead process engineer.**
- **CAPEX/OPEX evaluation for Flare, Odour treatment, Wastewater treatment systems. Participated in trial work for Lurgi LR gasifier, DeNOx and DeSOx systems' performance. Involved in BATNEEC/BPEO assessments as part of IPC and IPPC.**

Third Generation Ltd **Jan 1997 – Dec 1997**
Design and development of Gasification system

Northumbrian Environmental **Jan 1996 – Dec 1996**
Management Ltd
Co-ordinated removal and disposal of Offshore oil rig

Frost & Sullivan **April 1995 – Dec 1995**
Conducted a market analysis study titled "The European Market for Catalysts'.

University of Newcastle upon Tyne & **1991 – 1995**
University of Northumbria

Research and Teaching in combustion and environmental technologies
DESCON Engineering (pvt) Ltd. Pakistan **1985 – 1987**
Worked in Technical Services department

Pakistan Refinery Ltd. Pakistan **1984 – 1985**
Worked as trainee engineer in technical services and operations