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JUDGMENT SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

W. P. No. 12660 / 2023

Syed Ali Javaid Hamdani

VERSUS

The Federation of Pakistan through its Cabinet Secretary and 05 others

JUDGMENT

Date of Hearing	05.06.2023
Petitioner by:	Mr. Shah Khawar, Advocate Barrister Ahmed Qayyum, Advocate Barrister Syed Ali Nouman Shah, Advocate Barrister Hassan Safdar Khan, Advocate
Respondents No. 1 to 3 by:	Mr. Ali Jaffar Khan, Assistant Attorney General for Pakistan
Respondents No. 4 to 6 by:	Mr. Uzair Karamat Bhandari, Advocate Mian Sami ud Din, Advocate Mr. Imran Iqbal, Advocate Mr. Awais Asif Ali, Advocate alongwith Mr. Ahmad Arslan, Incharge Law SNGPL Mr. Amjad Ikram, Chief Officer, Media Affairs SNGPL M/s Imran Javed and Ahmad Sohail, Deputy Chief Officers Law SNGPL

ABID HUSSAIN CHATTHA, J. The controversy pertains to confrontation regarding exercise of powers between the Managing Director / Chief Executive Officer (the **"CEO"**) and Board of Directors (the **"Board"**) of Sui Northern Gas Pipelines Limited (the **"SNGPL"**) which is a public sector listed company as the Federal Government directly or indirectly holds 57.76 % shares of SNGPL. The Petitioner as the CEO of SNGPL has impugned the decisions taken by the Board with respect to seizure of his powers as the CEO by appointing an Acting CEO and initiation of inquiry against him with other consequential measures in the 600th emergent meeting of the Board held on 18.02.2023.

2. Briefly, the Board of SNGPL on 08.09.2019 advertised the position of the CEO on contract basis for a period of 03 years. Five candidates after due process were shortlisted and eventually the Board unanimously recommended top three candidates for appointment as the CEO including the Petitioner to the Ministry of Energy (Petroleum Division) for its concurrence. The Federal Government on 23.12.2020 accorded the sought concurrence and issued the notification regarding appointment of the Petitioner as the CEO of SNGPL on contract basis for a period of 03 years. On 31.12.2020, the Board also approved the appointment of the Petitioner as the CEO. The Petitioner duly accepted his appointment letter. Accordingly, the Board executed service contract and power of attorney in favor of the Petitioner to enable him to exercise the statutory powers of the CEO.

3. During the course of service, certain allegations and complaints arose against the CEO. The Chairperson of the Board on 17.02.2023 required the company Secretary to call an emergent meeting of the Board to discuss critical human resource issues with transparency and governance implications. The meeting of the Board was held on 18.02.2023. It is alleged by Respondents No. 4 to 6 that the Petitioner attempted to cancel or illegally disrupt the meeting of the Board and consequently, the meeting was conducted via Zoom. The Board after thorough deliberation resolved that the Petitioner shall seize to exercise any of his powers as the CEO of SNGPL with immediate effect till the Board or a Committee appointed by it, expeditiously completes its review of the matters discussed in the Board meeting and the Board finally takes a decision with respect to the future of the CEO. In this respect, the Board also revoked the power of attorney in favour of the Petitioner till further orders and delegated the powers to Mr. Amer Tufail, DMD(S) being the senior most officer of SNGPL with immediate effect. It was further resolved that a new power of attorney will be executed in due course of time in favour of the Acting CEO to enable him to exercise all powers and functions germane to the office of the CEO in accordance with law in his capacity as Acting CEO. The Board also constituted a special Sub-Committee of the Board comprising of two members to investigate the conduct of the CEO including any of the purported instances of financial irregularities and transgression, particularly

relating to *Uch Compression Project* with direction to submit the report within 15 working days. Other consequential measures were also adopted in the said meeting of the Board considered necessary for the smooth running and operations of SNGPL.

4. The Board statedly consists of 11 members. The impugned meeting of the Board was attended by 8 Directors out of which one abstained while 7 Directors passed the aforesaid resolutions. The Ministry of Energy vide letter dated 20.02.2023 communicated the decision of the Board to various officers including the Principal Secretary to the Prime Minister and the Secretaries of the Cabinet and Establishment Divisions, Islamabad.

5. Thereafter, the Petitioner instituted Writ Petition No. 641 / 2023 before the Islamabad High Court but withdrew the same for filing the same before this Court on the ground that Head Office of SNGPL is located at Lahore and Respondents No. 4 to 6 being the real contesting parties are also based in Lahore. Hence, this Petition.

6. The case of the Petitioner is that he was nominated as the CEO of SNGPL by the Federal Government in terms of Section 187(4) read with Section 188(2) of the Companies Act, 2017 (the **"Companies Act"**) and can only be removed by the Federal Government. As such, he cannot be proceeded against in the manner contemplated by the Board as the position of the CEO as well as the Board are statutory stipulations with separate and distinct role especially in the context of a public sector company. The impugned meeting of the Board was called in a hasty manner in violation of stipulated procedure and is, therefore, unlawful not only in terms of procedural irregularity but also for the reason that the Board does not have any power for suspension of the CEO who can only be removed by three fourth majority of the Board as ordained by law.

7. It was further stated that act of the Board of seizing the powers of the CEO by suspending him and appointing an Acting CEO in his place is an indirect way of circumventing the express provisions of the Companies Act and if the same is allowed, the Board of any company would effectively and legitimately be empowered to bypass the mandatory statutory stipulations and would be able to remove the CEO from his post merely on the strength of a simple resolution of the Board. Such a methodology would render the

applicable statutory provisions as redundant and will have serious consequences for the efficient and transparent operations of the company, particularly in the context of a public sector company. Learned counsels for the Petitioner also highlighted several instances of irregularities of the members of the Board to contend that the act of the Board was in fact based on *mala fide* to prevent the CEO from proceeding against the members of the Board and the impugned action is a counter blast by the Board.

8. Conversely, learned counsels for Respondents No. 4 to 6 at the very outset raised a number of preliminary objections regarding the maintainability of this Petition. It was submitted that SNGPL as a public sector listed company is governed by its Board and has no statutory rules of service. Moreover, the relationship between the Petitioner and SNGPL is contractual in nature as the CEO is employed under a contract of service. Hence, no constitutional Petition is competent in the absence of statutory rules and in view of the principle of '*master and servant*'. Reliance was placed on cases titled, "Qazi Tehmid Ahmed v. Secretary Ministry of Petroleum and 3 others" **(2015 PLC (C.S.) 449)**; "Muhammad Naeem Akhtar v. Federation of Pakistan through Secretary, Cabinet Division and others" decided on 30.01.2023 by the Islamabad High Court in Writ Petition No. 3879 / 2022; "Syed Nazir Gillani v. Pakistan Red Crescent Society and another" **(2014 SCMR 982)**; "Abdul Wahab and others v. HBL and others" **(2013 SCMR 1383)**; "Habib Bank Ltd. v. The State" **(2013 SCMR 840)**; "Sui Southern Gas Company Limited and others v. Saeed Ahmed Khoso and another" **(2022 SCMR 1256)**; "Pakistan Telecommunication Company Ltd. v. Muhammad Samiullah" **(2021 SCMR 998)**; and "Pakistan Airline Pilots Association and others v. Pakistan International Airline and another" **(2019 SCMR 278)**.

9. The second objection was taken to the effect that the Board has only temporarily revoked or withdrawn the delegated powers of the CEO pending an inquiry and as such, the discretionary jurisdiction of this Court cannot be invoked to interfere in the pending inquiry proceedings. Reliance was placed on cases titled, "Habib Bank Limited and others v. Syed Zia-ul-Hassan Kazmi" **(1998 SCMR 60)**; "Abdul Malik v. Government of Punjab and others" **(2019 PLC (C.S.) 764)**; "Naweed Akhtar Cheema v. Chairperson,

TEVTA and others" **(2011 PLC (C.S.) 803)**; "Ms. Serwat Azim v. Sindh Bank Limited through President / CEO and 7 others" **(2019 PLC (C.S.) 975)**; and "Commissioner of Income Tax and others v. Messrs Media Network and others" **(2006 PTD 2502)**.

10. The third objection was raised by contending that the Petition is premature under the doctrine of ripeness. Reliance was placed upon Naweed Akhtar Cheema, Abdul Malik and Ms. Seerwat Azim cases (supra) and cases titled, "Mughal-e-Azam Banquet Complex through Managing Partner v. Federation of Pakistan through Secretary and 4 others" **(2011 PTD 2260)**; "Reliance Commodities (Private) Ltd. v. Federation of Pakistan and others" **(PLD 2020 Lahore 632)**; and "Muhammad Hammad ur Rehman Zafar v. Director, Federal Investigation Agency, Lahore and another" **(PLD 2022 Lahore 177)**.

11. As fourth objection, it was stated that proper parties were not impleaded in the Petition. The Board has been impleaded though it is not a legal person, whereas, the allegation of *mala fide* was raised by the Petitioner against the Chairperson of SNGPL but she was not impleaded as a party in her independent right. Reliance was placed on case titled, "Aman Ullah Khan and others v. The Federal Government of Pakistan through Secretary, Ministry of Finance, Islamabad and others" **(PLD 1990 Supreme Court 1092)**.

12. Another objection was levelled to contend that the Petitioner has also made allegation of bias but no particulars of the same were specifically pleaded and as such, this Petition was not maintainable in view of law laid down in cases titled, "Syed Husnain Aamer v. Tehsil Municipal Officer, Narowal" **(2007 PLC (C.S.) 348)**; "The Federation of Pakistan through the Secretary, Establishment Division, Government of Pakistan Rawalpindi v. Saeed Ahmad Khan and others" **(PLD 1974 Supreme Court 151)**; "Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others" **(2012 SCMR 455)**; and "Tabassum Shahzad v. I.S.I. and others" **(2011 SCMR 1886)**.

13. Finally, it was submitted that the Committee members of the Board were fully empowered to conduct an inquiry against the CEO who are not disqualified simply on the basis that they participated in the impugned

meeting of the Board in which decision to conduct an inquiry was taken. Reliance was placed on case titled, "Baz Muhammad Kakar and others v. Federation of Pakistan through Ministry of Law and Justice and others" **(PLD 2012 Supreme Court 923)**.

14. On merits, it was submitted that appointment of the Petitioner as the CEO of SNGPL was made under Section 187(1) of the Companies Act read with Rule 5(2) of Public Sector Companies (Corporate Governance) Rules, 2013 (the **"PSC Rules"**) and not under Sections 187(4) and 188(2) of the Companies Act as stated by the Petitioner. As such, the Petitioner was not nominated by the Federal Government but the latter merely accorded its concurrence to the recommendations put forward by the Board through a competitive process. In this context, it was stated that 'nomination' and 'appointment' have different nomenclature. Sections 186(4) and 187(4) of the Companies Act empower the Federal Government to 'nominate' the CEO, whereas, Section 187(1) of the Companies Act empowers the Board to 'appoint' the CEO. This distinction is evidently made out by conjunctively reading the provisions of Section 188 of the Companies Act and is fortified by Rule 5(2) of the PSC Rules. Further, Clause 7 of the Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015 (the **"PSC Guidelines"**) stipulates that the Board has the power to appoint the CEO and issue him an appointment contract embodying the requisite terms and conditions of appointment. Learned Counsel relied upon case titled, "Waseem Majid Malik v. Federation of Pakistan through Cabinet Secretary and 23 others" **(2020 CLD 1207)** to contend that the Federal Government has the option to either nominate the Directors or to put them up for election and by analogy, the same principle applied with respect to appointment of the CEO. Hence, the Federal Government has the power to nominate the CEO and where it exercises this power, it can also determine his terms and conditions of appointment but in the present case, the Petitioner was appointed as the CEO by the Board which also determined the terms and conditions of his appointment under Sections 187(1) and 188(2) of the Companies Act read with Rule 5(2) of the PSC Rules. It was emphasized that the Petitioner was appointed by the Board and the appointment letter was also issued by the Board. The Federal Government merely provided its

concurrence to such appointment. Even otherwise, SNGPL being a public sector company is governed and run independently by its Board and the Federal Government has no jurisdiction in micro managing its affairs especially with regard to appointment and removal of the CEO. Reliance was placed on cases titled, "Engr. Ghazanfar Ali Khan and others v. F.O.P. and others" **(PLD 2014 Lahore 375)**; and "Babar Sattar v. Federation of Pakistan through Secretary Ministry of Water and Power and 4 others" **(2016 CLD 134)**.

15. Without prejudice to the above, even if the submission of the Petitioner is accepted that he was appointed as the CEO by the Federal Government, the approval is only required for appointment of the CEO and not for his removal since there is no provision which requires that only the Federal Government can proceed against the CEO or that its approval is required by the Board for removing him. Reliance was placed on case titled "Pyare Lal Gupta and another v. D. P. Agarwal and others" decided by Allahabad High Court on 23.07.1980. Further, the Federal Government has accepted the decision of the Board as depicted vide letter dated 20.02.2023 referred above and Respondents No. 1 to 3 in their respective reply to this Petition have fully supported the stance of the Board of SNGPL with respect to maintainability of this Petition as well as on merits.

16. It was also contended that the meeting of the Board was called in accordance with the specified procedure since under Rule 6(2) of the PSC Rules, the requirement of issuance of 07 days of notice for holding a meeting of the Board may be reduced or waived in case of an emergent meeting. Further, Article 106 of the Articles of Association of SNGPL empowers the Board to regulate their meetings, as the Board thinks fit and the Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they deem appropriate. A Director may, and the Secretary on the requisition of a Director shall at any time summon a meeting of Directors. As such, 07 days period was duly waived by the Board in exercise of powers vested with it. Hence, the objection of holding the meeting without the notice of 07 days is baseless especially when no member of the Board has raised an objection either to the lack of notice or

absence of agenda. Reliance was placed on case titled, "Nadeem Mumtaz Qureshi v. Pakistan Petroleum Limited and others" **(2019 CLD 1374)**. Therefore, this Court should exercise restraint in interfering in the internal management of the company. Reliance was further placed on case titled, "Muhammad Suleman Kanjiani and 3 others v. Dadex Eternit Ltd. through Chief Executive and 4 others" **(2009 CLD 1687)**. Without prejudice to the above, even if there is any irregularity in terms of inadequacy of time in the holding of the meeting of the Board, the Court should not interfere where the irregularity can be cured through proper course. Reliance was placed on cases titled, "Bentley-Stevens v. Jones and others" **(1974 2 All ER 653)**; "Muhammad Yousuf Ahmed and 5 others v. Artistic Denim Mills Limited" **(2021 CLD 134)**; and "Syed Hasan Masroor Zaidi and others v. Syed Ghayoor Zaidi and others" **(1988 CLC 1347)**.

17. It was next contended that the Petitioner has neither been suspended nor removed by the Board, rather, only delegated powers have been temporarily withdrawn during the pendency of an inquiry against the CEO which had been conferred upon him by the Board itself since the power to manage the company is vested with the Board and the CEO only exercises delegated powers as is evident from the conjunctive reading of Sections 2(14), 183, 188(1), 192(2) of the Companies Act. It was stressed that applicable law makes it abundantly clear that the position of the CEO is always subordinate to the Board and the latter is empowered under the law to define the respective role and responsibility of the CEO. As such, the Board can validly delegate powers to the CEO and conversely can also vary, reverse, alter or withdraw such powers from the CEO. Reliance was placed on case titled, "Major-General Shanta Shamsher Jung Bahadur Rana v. Kamani Brothers Private Ltd. and others" decided on 06.01.1958 by Bombay High Court. To emphasize the point, it was specifically stated that under the Companies Act, there are no specific powers reserved to be exercised by the CEO except to certify the Statutory Meeting under Section 131, to sign Director's Report under Section 227, to approve and authenticate the Financial Statement under Section 232, to issue notice of meeting of creditors under Section 281 and to appear before the Commission or Courts under Section 484.

18. The HR Manual of SNGPL was also quoted to substantiate the point that the management has the power to suspend an employee temporarily for any of the reasons mentioned in Clauses 113.1 to 113.4 thereof, which are fully applicable to the Petitioner as the CEO of SNGPL in terms of Clause 4 of his appointment letter. Thus, the Petitioner as the CEO of SNGPL is merely a delegate of the Board who can curtail his powers to carry out his accountability.

19. Elaborating the scope of Section 190 of the Companies Act, it was submitted that the Petitioner has not been removed from office but some of his powers had been curtailed temporarily in a pending inquiry and as such, no question of removal arises in this case in terms of Section 190 of the Companies Act which requires removal of the CEO by three fourth majority by total number of members of the Board. Further, Article 95 of the Articles of Association of SNGPL empowers the Board to vary or alter any power of the CEO which has been invoked by the Board requiring a resolution to be adopted by a simple majority. This is in line with Section 22(2) of the State-Owned Enterprises (Governance and Operations) Act, 2023 (the **"SOE Act"**) which stipulates that the decisions of the Board shall be taken by majority and only the appointment and removal of the CEO require three fourth majority of those present and voting and not by the total members of the Board. The impugned decisions were taken by 7 out of total 11 Directors and as such, the requirement of Section 22(2) of the SOE Act was also fulfilled particularly when the SOE Act applies notwithstanding anything contained in any other law for the time being in force and as such, it overrides Section 190 of the Companies Act.

20. Finally, it was urged that the allegation of *mala fide* levelled by the CEO against some members of the Board and the Chairperson are unsubstantiated and even otherwise, the Board is not subject to any accountability by the CEO. Hence, the Petition is liable to be dismissed.

21. Arguments heard. Record perused.

22. At the very outset, it is imperative to address the objections qua maintainability of this Petition raised by the Respondents. It is noted that SNGPL is a public sector listed company as 57.76 % of its shares are

directly or indirectly held by the Federal Government. It is also a public utility company providing gas to two provinces of Pakistan and as such, rendering essential services to the people of Pakistan. The controversy raised in this Petition, in essence, relates to the operation and governance of SNGPL which directly affects the people of Pakistan. The property and assets of any public sector company ultimately belongs to the people of Pakistan who have a fundamental right to ensure and expect that public sector companies are run and operated in accordance with law so that their interests and rights are adequately safeguarded. It must always be remembered that in case of public sector companies, the members of the Board appointed, nominated or elected on the strength of shares held by the Federal Government and its entities are always acting as trustees and custodians of the people of Pakistan since public property of the Federal Government and its entities in the last resort belongs to the people of Pakistan. In this respect, the Board of a company consisting of members who are also direct owners is different than the Board of a public sector company who are not direct owners but exercise their powers as custodian of public property. Although, there is no such distinction in terms of law but to cater the peculiar nature of public sector companies, multiple laws prescribing stringent requirements have been put in place to regulate the procedure qua appointment, removal, role and functions of the members of the Board and the CEO of public sector companies to achieve the objective of transparency, accountability and efficiency in corporate governance.

23. There is no cavil to the proposition that SNGPL has no statutory rules of service as a public sector listed company and as such, constitutional Petitions with respect to the terms and conditions of service of its employees based on service contracts are not maintainable in terms of jurisdiction vested in this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan. However, the said rule is not applicable in this case as the issues raised in this Petition do not pertain to the terms and conditions of service of the Petitioner within the scope of his service contract. Rather, the instant Petition involves interpretation of statutory provisions regarding the appointment, responsibilities, functions, powers and removal of the CEO vis-à-vis and the responsibilities, functions and powers of the Board in order

to determine the scope and mandate of the applicable law germane to a public sector company which is required to be run and operated in accordance with the highest standards of good governance prescribed by law. The Petition does not call upon this Court to interpret any term and condition of employment of the Petitioner regarding his service benefits in lieu of services being rendered by the Petitioner as the CEO of SNGPL. As such, the principles of non-existence of any statutory rules of service and '*master and servant*' are not applicable in the instant case. Further, the Petitioner does not contend that as the CEO of SNGPL, he is not subject to accountability or due process with respect to his responsibilities and obligations. Therefore, the objection that the discretionary jurisdiction of this Court should not be invoked to interfere in the inquiry proceedings against the Petitioner is misplaced since this Court is not called upon to opine that no accountability regarding the conduct or powers of the CEO can take place. The objection to the effect that this Petition is premature under the doctrine of ripeness is also not made out as interpretation of statutory provisions is the basis of this Petition which is the sole prerogative of this Court and is not a function of the Board. The objections that the Board should not have been impleaded as party to this Petition as it is not a distinct juristic person or that Chairperson of the Board should have been impleaded independently on account of assertions casted by the Petitioner against her are insignificant and inconsequential. This is for the reason that SNGPL is a party to this Petition through its Chairperson who is also the head of the Board and as such, each member of the Board has due notice of the same. Though, each member of the Board should have ideally be impleaded as party to this Petition as the meeting of the Board and decisions taken by the Board were impugned yet no member of the Board or the Chairperson filed any application to become a party to this Petition. Needless to state that this Court has ample powers to add or delete any party as deemed necessary. However, as SNGPL is duly represented through its Chairperson and this Court does not intend to adjudicate any factual matter relating to any personal right of any member of the Board including its Chairperson being beyond the scope of constitutional jurisdiction vested in this Court, therefore, the objections qua proper parties to this Petition are discarded as

immaterial. It is also noted that original jurisdiction under the Companies Act also vests in this Court. Learned counsel of Respondents No. 4 to 6 quoted extensive case law regarding non-maintainability of this Petition which has been perused but found distinguishable on facts and as such, is not applicable to the peculiar facts and circumstances of the instant case for the reasons recorded above.

24. In view of the aforesaid factual context and in the light of the rival contentions of the parties, the following primary points for determination are framed:

(i) What is the scope and mandate of the office of the CEO vis-à-vis the role and functions of the Board of a public sector company? and

(ii) Whether the acts and decisions of the Board of SNGPL regarding initiation of inquiry against the CEO, ceasing of the powers of the CEO by withdrawing the power of attorney executed in his favour, appointment of the Acting CEO and conferring of powers of the CEO to him by executing a fresh power of attorney in his favour are in accordance with law?

25. The Companies Act envisages different kinds of companies and the company law of Pakistan differs in terms of its applicability depending upon the type of company. The most stringent standards are prescribed with respect to the operation and governance of a public sector company in order to protect public property and ensure good governance. It is important to mention that the SOE Act was promulgated on 30.01.2023. The objective is aptly described in the preamble of the SOE Act which stipulates that the governance and operation of state-owned enterprises, if not made effective, affects fiscal discipline and quality of service delivery by the State. Section 36 of the SOE Act saves all acts and laws including appointment of any officer prior to the coming into force of the SOE Act but mandates that within one year from its coming into effect, the Federal Government shall, in the case of any inconsistency, initiate legislation to bring the laws of state-owned enterprises in conformity with the provisions of the SOE Act. Notwithstanding the same, the SOE Act came into force at once and is fully

applicable subject to the caveats stated above. Therefore, this Court is cognizant of the fact that the events of appointment of the CEO of SNGPL are prior in time from the date of promulgation of the SOE Act and some grace period is still available to the Federal Government to hammer out the inconsistencies among various applicable laws regarding the regulation of public sector companies yet the provisions of the SOE Act which are not inconsistent with laws or relate to events subsequent to its promulgation are fully attracted to decide the issues raised in this Petition as the provisions thereof also effectively disclose the intention of the legislature with respect to the functioning and operations of public sector companies.

26. Section 4 of the Companies Act expressly provides that the provisions of the Companies Act preempt anything contained in any other law or the Memorandum or Articles of a company or in any contract or agreement executed by the company or any resolution passed by the company in general meeting by its shareholders or by its Board and any such provision or resolution to the extent of its inconsistency with any provision of the Companies Act would be void. However, Section 3 of the SOE Act states that notwithstanding anything contained in any other law for the time being in force, the SOE Act shall have application to all public sector companies as defined in Section 2(54) of the Companies Act which are owned and controlled by the Federal Government. Section 2(54) of the Companies Act defines a public sector company as follows:

> ""public sector company" means a company, whether public or private, which is directly or indirectly controlled, beneficially owned or not less than fifty-one percent of the voting securities or voting power of which are held by the Government or any agency of the Government or a statutory body, or in respect of which the Government or any agency of the Government or a statutory body, has otherwise power to elect, nominate or appoint majority of its directors and includes a public sector association not for profit, licensed under Section 42:
>
> Provided that nomination of directors by the Commission on the board of the securities exchange or any other entity or operation of any other law shall not make it a public sector company."

27. The SOE Act is a special and subsequent Statute relating to a public sector company and as such, preempts the provisions of the Companies Act,

in case of any inconsistency between the two enactments. Therefore, as a rule of construction, a command of law in the SOE Act would preempt an inconsistent provision of the Companies Act and a statutory stipulation in the Companies Act would override anything inconsistent in the Memorandum and Articles of Association of the company or an agreement executed by the company or any resolution passed by the company in general meeting by its shareholders or the Board.

28. Similarly, Section 2(d)(i) of the SOE Act defines the term 'controlled by the Government' in the case of a company with reference to the right of the Federal Government to appoint a majority of Directors or control over management or policy decisions, exercisable by a person individually or through any person acting in concert, directly or indirectly, whether by virtue of Federal Government shareholding, management right, shareholders agreement, voting agreement or otherwise. Section 2(j) of the SOE Act defines the term 'owned by the Federal Government' in the case of a company to mean an entity in which the Federal Government directly or indirectly holds 50% or more shareholding. Section 2(e) of the SOE Act describes a 'commercial state-owned enterprise' as a state-owned enterprise that generates the majority of its revenue from the sale of goods or services or a combination of both on a commercial basis. Since the Federal Government directly or indirectly holds 57.76 % shares in SNGPL, and as such, has the power to elect, nominate or appoint majority of its Directors, and exercise control over policy and management decisions, therefore, the latter is a public sector company in terms of Section 2(54) of the Companies Act. As SNGPL is listed on the stock exchange and its remaining shares are held by dispersed private persons, it is also a listed company. At the same time, SNGPL is a commercial state-owned enterprise in terms of Section 2(e) of the SOE Act as it has been established under the Companies Act and also generates the majority of its revenue from the sale of goods or services or a combination of both on a commercial basis.

29. Section 4 of the SOE Act requires the Federal Government once in every five years to prepare and prescribe a state-owned enterprise Ownership and Management Policy for giving effect to its objectives. The policy includes the role of the Federal Government in the governance of

state-owned enterprises, the manner and procedure for exercising the rights of the Federal Government as shareholder in state-owned enterprises, clarification of the respective roles and responsibilities of any division of the Federal Government under the Rules of Business, 1973, the Board and other stakeholders involved in the implementation of the policy, guidelines for the Board nominations committee, the manner of regulation of conflict of interest of Directors, and any other matter required to give effect to the provisions and objectives of the SOE Act. Section 4(3)(a)(ii) of the SOE Act specifically states that the policy shall clarify the manner of giving effect to the institutional arrangements, whereby, roles and responsibilities have been assigned under this Act, in particular and without limitation, the manner in which the Board shall undertake its responsibilities with regard to the appointment of the CEO. Chapter 5 of the SOE Act pertains to responsible management and Section 9 thereof specifically states that this Chapter shall apply to all Boards of state-owned enterprises, notwithstanding anything contained in any other law for the time being in force. Section 13(2) provides that an independent Director once appointed by the Federal Government shall not be removed unless it is established through any inquiry conducted in the prescribed manner. Section 15 of the SOE Act relates to the Chairman of the Board and the CEO. Sub-Section 2 thereof states that the Chairman of the Board shall be appointed by the Federal Government and shall be responsible for leading the Board and ensuring its effective functioning and continuous development and shall not be involved in day-to-day operations of the state-owned enterprise. Sub-Section 3 thereof stipulates that the CEO shall be responsible for the management of the state-owned enterprise and for its procedures in financial and other matters under delegation from the Board and subject to the oversight and directions of the Board. The CEO shall be responsible for the proper implementation of strategies and polices approved by the Board. Chapter 6 of the SOE Act relates to responsibilities, powers and functions of the Board. Section 17 of the SOE Act provides that the Board shall be given autonomy and independence in the discharge of its functions under the law and no administrative or standing instructions by any division of the Federal Government shall be applicable to any state-owned enterprises unless prior

approval of the Federal Government has been obtained and any such instructions already in field at the time of coming into effect of this Act shall require ratification of the Federal Government within a period of six months, failing which they shall be deemed to be rescinded.

30. Section 18 of the SOE Act stipulates that the Board, in the case of a company, shall appoint the CEO under a performance-based contract for a specified period. The Board is an under obligation for ensuring the performance of the CEO through regular monitoring against agreed performance measure. Section 20 of the SOE Act stipulates that the Board shall ensure the integrity of the systems of internal control and any person who is found liable for a deviation or violation from the company's code of conduct or other systems of internal control shall be subject to disciplinary proceedings in accordance with the internal policies of state-owned enterprise. The Board under Section 21 of the SOE Act is also empowered to establish an audit committee which in turn is also empowered to investigate, where necessary on a confidential basis, any deviation from or violation of the company's code of conduct or other systems of internal control. Section 22 of the SOE Act states that the Board shall meet at least once in every two months or at other times when the Board considers necessary for the efficient management of the business and affairs of the state-owned enterprise. Sub-Section 2 thereof further states that notwithstanding anything contained in any other law for the time being in force, decisions of the Board shall be taken by majority, however, the specified decisions shall require a decision by three fourth majority of the Board which shall include the vote of the nominee Director representing the Federal or Provincial Government and extends to the appointment and removal of the CEO of the state-owned enterprise.

31. Like every other company, a public sector company is managed by the CEO. The term is defined in Section 2(14) of the Companies Act as follows:

> ""chief executive", in relation to a company means an individual who, <u>subject to control and directions of the board, is entrusted with whole, or substantially whole, of the powers of management of affairs of the company</u> and includes a director or any other person occupying the position of a chief executive, by whatever name called, and whether under a contract of service or otherwise."
>
> (Underlining is mine)

32. The definition of the CEO in the Articles of Association of SNGPL is not inconsistent with Section 2(14) of the Companies Act and importantly defines the CEO as follows:

> "'Chief Executive" means a person so appointed by the Board, given the designation of Managing Director or any other designation in whom shall vest the powers and functions in relation to the management and administration of the affairs of the company."
>
> (Underlining is mine)

33. It follows from the above that the CEO of the company is the most important person in the sense that law confers the responsibility of administration and management of the company to the CEO. This is his full-time role and responsibility as the executive head of the company. The appointment of the CEO is prescribed in Sections 186 and 187 of the Companies Act which for ready reference are reproduced as under:-

> "186. Appointment of first chief executive.
>
> (1) Every company shall have a chief executive appointed in the manner provided in this section and section 187.
>
> (2) The name of first chief executive shall be determined by the subscribers of the memorandum and his particulars specified under section 197 shall be submitted along with the documents for the incorporation of the company.
>
> (3) The first chief executive shall, unless he earlier resigns or otherwise ceases to hold office, hold office up to the first annual general meeting of the company or, if a shorter period is fixed by the subscribers at the time of his appointment, for such period.
>
> (4) Notwithstanding anything contained in this section, the Government shall have the power to nominate chief executive of a public sector company in such manner as may be specified.
>
> 187. Appointment of subsequent chief executive.
>
> (1) Within fourteen days from the date of election of directors under section 159 or the office of the chief executive falling vacant, as the case may be, the board shall appoint any person, including an elected director, to be the chief executive, but such appointment shall not be for a period exceeding three years from the date of appointment:
>
> Provided that the chief executive appointed against a casual vacancy shall hold office till the directors elected in the next election appoint a chief executive.

(2) On the expiry of his term of office under section 186 or sub-section (1) of this section, a chief executive shall be eligible for reappointment.

(3) The chief executive retiring under section 186 or this section shall continue to perform his functions until his successor is appointed, unless non-appointment of his successor is due to any fault on his part or his office is expressly terminated.

(4) Notwithstanding anything contained in this section, the Government shall have the power to nominate chief executive of a company where majority of directors is nominated by the Government, in such manner as may be specified.

188. Terms of appointment of chief executive.

(1) Save as provided in sub-section (2), the terms and conditions of appointment of a chief executive shall be determined by the board or the company in general meeting in accordance with the provisions in the company's articles.

(2) The terms and conditions of appointment of a chief executive nominated under section 186 or 187 shall be determined by the Government, in such manner as may be specified.

(3) The chief executive shall if he is not already a director of the company, be deemed to be its director and be entitled to all the rights and privileges, and subject to all the liabilities, of that office."

(Underlining is mine)

34. Article 95 of the Articles of Association of SNGPL dealing with the appointment of the CEO reads as under:

"The Directors may make the appointment of the chief executive on such terms and may from time to time vest in or assign to chief executive such powers, discretions and duties and may impose on him such regulations, as may seem expedient. The Directors shall fix salary, allowance and such perquisites of chief executive as they deem fit."

(Underlining is mine)

35. Perusal of the above provisions makes it clear that Section 186(2) and (3) of the Companies Act only deal with respect to appointment of the first CEO. In the instant case, the matter relates to appointment of the subsequent CEO. It follows that ordinarily the Board has the power to appoint the CEO for a maximum period of three years. However, the general and ordinary

power of appointment under Section 187(1) of the Companies Act is subject to Section 186(4) or 187(4) of the Companies Act which gives an unfettered right to the Government to nominate the CEO of the public sector company or the company where majority of the Directors are nominated by the Government in the manner as it may be specified. Therefore, the Government has two options. It may follow the procedure of appointment of the CEO under Section 187(1) of the Companies Act by not exercising its exclusive power of nomination under Section 186(4) or 187(4) of the Companies Act or vice versa.

36. Thus, Section 187(1) empowers the Board to appoint any person including an elected Director as the CEO for a maximum period of three years with a caveat that the CEO appointed against the causal vacancy shall hold office till the Directors elected in the next election appoint the CEO. The retiring CEO is required to continue to perform his functions until his successor is appointed, unless non-appointment of his successor is due to any fault on his part or his office is expressly terminated. The Board or the shareholders in the general meeting under Section 188(1) of the Companies Act are empowered to determine the terms and conditions of appointment of the CEO. Flexibility is provided by law to the shareholders to opt one of the two ways by incorporating their choice in the Articles of Association. Article 95 of the Articles of Association of SNGPL vest this power with the Board. In case of a nominated CEO under Section 186(4) or 187(4) of the Companies Act, the terms and conditions are determined by the Government.

37. The appointment of the CEO of a public sector company in terms of Section 187(1) of the Companies Act is further regulated under the PSC Guidelines which stipulate that such appointment must be based on ‘fit and proper criteria’ specified in Schedule II of the PSC Guidelines. It is mandated that the CEO must continuously meet the fit and proper criteria in terms of his performance and the requirement is so stringent that Clause 3 of the PSC Guidelines provides that at any time during the term of his office, if it is found that the CEO has failed to meet the same, the Board may remove him before the expiration of his term in office in accordance with Section 190 of the Act. The relevant process of appointment of the CEO in terms of

fit and proper criteria is specified in Schedule I of the PSC Guidelines. It prescribes mandatory advertisement, shortlisting process, evaluation of shortlisted candidates and the Interviewing process. Rule 5(2) of the PSC Rules deals with the responsibility of the Board in this respect. It provides as under:-

> "The Board shall evaluate the candidates based on the fit and proper criteria and the guidelines specified by the Commission for appointment to the position of the chief executive and recommend at least three candidates to the Government for its concurrence for appointment of one of them as chief executive of the public sector company, except where the chief executive is nominated by the Government. On receiving concurrence or nomination of the Government, as the case may be, the Board shall appoint the chief executive in accordance with the provisions of the Act. The Board shall also be responsible for development and succession planning of the chief executive."

(Underlining is mine)

38. The Board is required to make recommendations to the competent authority in terms of Clause 6 which leads to appointment of the CEO under Clause 7 of Schedule I of the PSC Guidelines which are reproduced as under:-

> "6. Recommendation from the Board to the Competent Authority.
>
> (1) The Board shall recommend a minimum of three candidates to the line ministry for appointment to the position of Chief Executive.
>
> (2) Copy of the minutes of meeting of the Board recommending the shortlisted candidates shall be forwarded to the line ministry for information and perusal.
>
> (3) If the line ministry does not concur to appoint any of the proposed candidates, it shall highlight the reasons for non-concurrence and refer the matter back to the public sector company for reconsideration and with the direction to identify additional / alternative candidates.
>
> (4) The Board may either re-evaluate the candidates from the pool of available applicants or reinitiate the appointment process, if none of the shortlisted candidates is found fit and proper for the position.
>
> (5) The candidates shall be recommended to the line ministry in the order of preference based on the results of evaluation.

7. Appointment of Chief Executive.

(1) Upon concurrence of the competent authority, the Board shall appoint the chief executive and issue him a contract letter, with the requisite terms and conditions of appointment, signed by the Chairman, or other person authorized by the Board.

(2) It shall be ensured that the appointment of chief executive is finalized at least thirty days before the date of expiry of the term of the incumbent chief executive so that the appointment is made by the Board within the period stipulated under sections 198 and 199 of the Ordinance."

(Underlining is mine)

39. Further, Rule 5(c)(ii) of the PSC Rules empowers the Board in order to ensure equality of opportunity to establish open and fair procedures for making appointments. Further, the Board is allowed to determine the terms and conditions of service and may also nominate a committee consisting of one of its members or senior Executives for investigating, where necessary on a confidential basis any deviation from code of conduct of the company.

40. Therefore, it is evident that notwithstanding the power of nomination of the CEO vested with the Federal Government under Section 187(4) of the Companies Act, the Federal Government did not exercise the power of nomination regarding the CEO of SNGPL and followed the process of the appointment of the CEO prescribed under Section 187(1) of the Companies Act read with the PSC Guidelines and the PSC Rules. The Board of SNGPL followed an advertised competitive process through which the Petitioner was shortlisted and his name was included in the panel of three shortlisted candidates recommended by the Board to the Federal Government seeking its concurrence to one of the three candidates. The Federal Government concurred with the name of the Petitioner whose name was second in priority, whereafter, the notification was issued by the Federal Government. The Board, thereafter, issued the letter of appointment to the Petitioner and upon its acceptance, the service contract was duly executed between SNGPL and the Petitioner. The procedure adopted by the Board in appointment of the CEO is in conformity with Section 18(1) of the SOE Act which deals with the appointment of the CEO and ordains that the Board, in the case of a

company shall appoint the CEO of the state-owned enterprise under a performance contract for a specified period. Hence, the contention of the Petitioner that he was not appointed by the Board but nominated by the Federal Government is misplaced.

41. The powers, functions and duties of the CEO are spelled out in Section 15(3) of the SOE Act which is reproduced as under:-

> "(a) be responsible for the management of the state-owned enterprise and for its procedures in financial and other matters under delegation from the Board and subject to the oversight and directions of the Board;
>
> (b) ensure the proper implementation of strategies and policies approved by the Board; and
>
> (c) putting in place appropriate arrangements to ensure that funds and resources are properly safeguarded and are used economically, efficiently and effectively and in accordance with the state-owned enterprise business plan, the primary objective and all statutory obligations."
>
> (Underlining is mine)

42. The Companies Act, as already stated above, by way of statutory command vests the power of administration and management of the company on day-to-day basis upon the CEO. Rule 4(3) of the PSC Rules explaining the functions of the CEO states as under:-

> "The chief executive is responsible for the management of the Public Sector Company and for its procedures in financial and other matters, subject to the oversight and directions of the Board, in accordance with the Act and these rules. His responsibilities include implementation of strategies and policies approved by the Board, making appropriate arrangements to ensure that funds and resources are properly safeguarded and are used economically, efficiently and effectively and in accordance with all statutory obligations."
>
> (Underlining is mine)

43. Therefore, the vesting of powers and functions in the CEO by the Board is a statutory command which cannot be refused in the applicable scheme of law. The Board cannot at the same time appoint the CEO and refuse to vest such powers and functions in him through appropriate instruments which are necessary for the CEO to perform his statutory duties to manage and operate the company. To understand the scheme of law, the provision contained in Section 188(3) of the Companies Act is of immense

significance which proclaims that if the CEO is not a Director of the company, he is deemed to be its Director and is entitled to all the rights and privileges and subject to all the liabilities of that office. Hence, the CEO being also a Director of the company, is also the member of the Board. The difference then emerges that the CEO is entrusted with the management and administration of the company as a whole time Executive head of the company in contrast to Directors whose role and functions are part-time limited to overall control and oversight of the company.

44. Section 18(2) of SOE Act spelling out the powers and functions of the Board proclaims that the Board shall be responsible for ensuring the performance and regular monitoring of the CEO against agreed performance measures and his development and succession planning. Section 183 of the Companies Act lists the powers of the Board in the following terms:-

> "(1) The business of a company shall be managed by the board, who may exercise all such powers of the company as are not by this Act, or by the articles, or by a special resolution, required to be exercised by the company in general meeting.
>
> (2) The board shall exercise the following powers on behalf of the company, and shall do so by means of a resolution passed at their meeting, namely: ….."
>
> (Underlining is mine)

45. The Board is headed by the Chairman. Section 15(1) of the SOE Act differentiates between the role of the CEO and the Chairman of the Board. It provides that no person can hold office as Chairman and the CEO of a state-owned enterprise simultaneously, and the office of the Chairman shall be separate and his responsibilities distinct, from those of the CEO. Section 15(2) of the SOE Act further adds that the Chairman of the Board shall be appointed by the Federal Government and shall be responsible for leading the Board and ensuring its effective functioning and continuous development and shall not be involved in day-to-day operations of the state-owned enterprise. The Board in terms of Section 192(2) of the Companies Act is obligated to clearly define the respective roles and responsibilities of the Chairman and the CEO of a listed company. It is importantly stated that none of the powers vested under Section 183(2) of the Companies Act relate to any action against the CEO, whereas, the Companies Act specifically

imposes limitation on the powers of the Board to the effect that the Board cannot exercise any power that is liable to be exercised by the shareholders under the Companies Act or the Articles or by a special resolution. At the same time, neither the CEO nor the Board or the shareholders of a company can exercise any power that is in contravention to the express statutory dictates enshrined in any applicable law. Hence, the functions of the CEO can only be performed by him and by no one else. The Board cannot deviate from the statutory command. This leads to all important question as to what the Board may do when it for any reason is dissatisfied from the CEO. The answer is embodied in Section 22(2) and (3) of the SOE Act which for ready reference is detailed below:-

> "(2) Notwithstanding anything contained in any other law for the time being in force, decisions of the Board shall be taken by majority, however, the following decisions shall require a decision by three-fourth majority, which shall include the vote of the nominee director representing the Federal or Provincial Government, namely—
> (a) appointment and removal of chief executive officer of the state-owned enterprise;
> (b) approval of the statement of corporate intent and business plan;
> (c) proposals for sale of sizeable assets;
> (d) annual budget statement approval; and
> (e) sale of assets of the company.
>
> (3) The Chairman of the Board shall in case of equal number of votes, have a casting vote."
>
> (Underlining is mine)

46. Section 190 of the Companies Act which allows the Board to remove the CEO reads as under:

> "190. Removal of chief executive.
>
> (1) The board by resolution passed by not less than three-fourths of the total number of directors for the time being, or the company by a special resolution, may remove a chief executive before the expiration of his term of office notwithstanding anything contained in the articles or in any agreement between the company and such chief executive.
>
> (2) Notwithstanding anything contained in this section, the Government or an authority or a person authorized by it shall have the power to remove chief executive of a company where more than seventy-five percent of the voting rights are held by the Government."
>
> (Underlining is mine)

47. Article 97 of the Articles of Association of SNGPL regarding the power of the Board to remove the CEO reads as under:-

> "The Directors of the Company by resolution passed by not less than three-fourth of the total number of Directors for the time being, or the Company by a special resolution, may remove the chief executive before the expiration of his term of office notwithstanding anything contained in the Articles or in any agreement between the Company and such chief executive."
>
> (Underlining is mine)

48. Rule 7(1) of the PSC Rules provides that the Board shall establish appropriate arrangements to ensure that it has access to all relevant information, advice and resources necessary to enable it to carry out its role effectively. Significant issues shall be placed before the Board for its information and consideration, in order to formalize and strengthen the corporate decision-making process. Rule 7(2) of the PSC Rules lists significant issues which conspicuously does not specifically include the removal of the CEO which fortifies the conclusion that it is dealt with under the aforesaid express statutory provisions.

49. It is explicitly manifest from the above provisions of law that Section 190 of the Companies Act importantly stipulates that the Board by not less than three fourth of the total number of Directors for the time being or the company by a special resolution, may remove the CEO before the expiration of his term of office, notwithstanding anything contained in the Articles or in any agreement executed by the company. Thus, the right to remove the CEO is concurrently conferred upon the Board and the shareholders. However, stringent statutory threshold beyond simple majority is prescribed given the peculiar and utmost important office of the CEO to guard and protect that office against extraneous factors, blackmailing and victimizing in the best interest of the company, particularly, the interests of the minority shareholders which otherwise, may be jeopardized by oppression of majority. Once again, Section 190(2) of the Companies Act provides that notwithstanding anything contained in this Section, the Government or an authority or a person authorized by it shall have the power to remove the CEO of the company where more than 75% of the voting rights are held by the Government. Needless to say that the said provision is not attracted in the instant case as the Federal Government holds less than 75% shares in

SNGPL. There is no inconsistency between the provisions of Section 22(2) of the SOE Act, Section 190 of the Companies Act and Article 97 of the Articles of Association of SNGPL with respect to removal of the CEO. Section 22(2)(a) of the SOE Act mandates that the CEO cannot be removed by the Board except by a resolution passed by three fourth majority. It does not say that resolution by three fourth majority of the Board will be passed by the Directors 'present or voting' or by the 'total members' of the Board. Hence, the stipulation contained in Section 190(1) of the Companies Act and Article 97 of the Articles of Association of SNGPL would prevail mandating three fourth majority of 'total members' of the Board. Thus, all the three cited provisions would become harmonious to each other in conformity with the cardinal principle of interpretation of statutes requiring harmonious construction of provisions. Therefore, the CEO of SNGPL can be removed by the Board by a resolution passed by not less than three fourth of the total number of Directors for the time being on the Board of SNGPL or by the shareholders of SNGPL by a special resolution which also requires three fourth majority of the shareholders in terms of Section 2(66) of the Companies Act. It is reiterated that Clause 3 of Schedule-II to the PSC Guidelines provides that where at any point of time, it has been found that the CEO has failed to meet the fit and proper criteria during the term of his office, the Directors of the company may remove him before the expiration of his term of office in accordance with the provisions of Section 190 of the Act. Therefore, it is established beyond doubt that the only course available to the Board against the CEO of the company is to seek his removal as ordained by law.

50. Section 22(1) of the SOE Act mandates that the Board of the company shall meet at least once in every two months and at other times that the Board considers necessary for the efficient management of the business and affairs of the state-owned enterprise. Rule 6(2) of the PSC Rules stipulates the conditions of meetings of the Board and provides that written notice of meetings, including the agenda, duly approved by the Chairman, shall be circulated not less than seven days before the meetings, except in the case of emergency meetings, where the notice period may be reduced or waived by the Board. Rule 6(5) of the PSC Rules also stipulates that the Board meeting

held and attended through video-conferencing shall be a valid meeting, as long as its proceedings are properly recorded and the requirements specified by the Commission for public companies for holding the Board meetings through video-conferencing are met. Importantly, Rule 8(1) of the PSC Rules provides that the performance evaluation of members of the Board including the Chairman and the CEO shall be undertaken annually by the Government for which the Government shall enter into performance contract with each member of the Board at the time of his appointment. Rule 12(1)(c) of the PSC Rules authorizes the Board to set up various committees in performing its functions efficiently and for seeking assistance in the decision-making process which include human resource committee dealing with all employees relating matters including performance evaluation. Protection is also accorded to chief financial officer, company secretary and chief internal auditor in terms of their appointment and removal and it has been stipulated in Sub-Rule 3 thereof that the chief financial officer, the company secretary, or the chief internal auditor of public sector company shall not be removed except with the approval of the Board.

51. The next aspect of the case is with respect to the conduct and holding of meeting of the Board and the decisions taken therein regarding initiation of inquiry against the CEO, suspension and withdrawal of his powers, appointment of Acting CEO and conferring of powers of the CEO to the Acting CEO. In the scheme of law enunciated above, there is no cavil to the proposition that the Board was well within its right to order initiation of inquiry against the CEO in case, the Board came to the conclusion that there was sufficient material which warranted such an inquiry which was necessary before proceeding for his removal. However, the inquiry proceedings being conducted by a Committee of Directors constituted by the Board could well proceed without preventing the CEO to perform his functions under the law. Rather, the law provides unfettered procedure and powers to the Board to remove the CEO even without conducting any inquiry, whatsoever, if the Board reaches to the conclusion that for any reason in the discretion of the Board, the removal of the CEO is in the best interest of the company. However, by not adopting and following the laid down procedure and exercise of statutory powers vested with the Board, the

latter adopted an indirect way of removing the CEO, thus, violating the specific mandatory provisions of applicable law. It is well entrenched in our jurisprudence that what cannot be done directly, must not be done indirectly. In the instant case, the mandatory express statutory provisions barred the Board to clinch such powers of the CEO which may have hindered him to perform his statutory functions as required by law.

52. It is also noted that this Court does not intend to go into the question of validity or invalidity of the meeting of the Board in which the impugned resolutions were passed as it is within the powers and functions of the Board to convene and hold their meetings. The alleged irregularity involves factual inquiry and as such, not warranted as the same is even not required to determine the pivotal question before this Court. However, it may be observed that in case of an inquiry, a proper conventional meeting of the Board should have been called with a notice of seven days with a specific agenda to hold discussion on the allegations against the CEO and in such a meeting, the CEO may have been duly confronted with the same. In case, the Board deemed it necessary, it may well in the presence of the CEO, initiate any necessary investigation or inquiry and may have constituted a committee for the purpose in accordance with law. The bare reading of the minutes of the impugned Board meeting establishes that the alleged charges against the CEO did not by any stretch of imagination required calling of an 'emergent meeting' with less than one day notice with a generalized, vague and subjective agenda by dispensing the requirement of notice of seven days. This is especially so when the matter related to charges against the CEO was 'most significant' and 'extremely important'. Suffice is to hold that holding and conduct of impugned meeting of the Board was in sheer violation of principles of good governance detailed above under various applicable provisions of law that created a management and administrative crises in SNGPL which was not only detrimental for the shareholders but also adversely affected the provision of services to the people.

53. The contention of the Respondents that the Board had itself delegated powers upon the CEO and as such, had all the right to withdraw the same is misconceived to the extent that such powers could have been exercised only in accordance with law. This means that such powers could not have been

withdrawn which had the effect to prevent the CEO to run the operation and management of the company as required by statutory provisions. The mere fact of conferring such power to the Acting CEO itself demonstrates that the statutory functioning of the CEO was infringed and impaired which was beyond the scope of powers to be exercised by the Board. Thus, by withdrawing the powers of the CEO, the Board violated the mandate of the CEO with respect to his statutory powers regarding management and administration of the company. It may also be mentioned that the reliance by the Respondents upon HR manual of SNGPL is misplaced for the reason that the power of suspension listed therein does not preempt the statutory provisions and even otherwise, the provisions relate to an employee and not a statutory officer or override statutory stipulations.

54. The following conclusions are, therefore, safely drawn from the examination of the scheme of applicable law:

(i) The offices of the CEO, Chairman and member of the Board are separate and independent in terms of appointment, removal, role, powers and functions which are regulated by mandatory provisions of law and the same cannot be circumvented or made redundant by exercise of discretionary and general powers vested in any of such offices;

(ii) The process of appointment and removal of the CEO is regulated by specific mandatory legal provisions which preempt the general role of oversight, supervision and control of the Board over the CEO;

(iii) Notwithstanding the power of nomination of the CEO vested with the Federal Government under Section 187(4) of the Companies Act, the Federal Government did not exercise the power of nomination regarding the incumbent CEO of SNGPL and followed the process of the appointment prescribed under Section 187(1) of the Companies Act read with the PSC Guidelines and PSC Rules;

(iv) The incumbent CEO is also a Director of SNGPL and as a member of the Board has the same powers, functions and responsibilities as any other member of the Board;

(v) The processes of appointment and removal of the CEO are separate and distinct and does not have any co-relation with each other;

(vi) There is no role of the Federal Government in the removal of the incumbent CEO of SNGPL as the Federal Government does not hold more than 75% shares in SNGPL as ordained by Section 190(2) of the Companies Act;

(vii) Therefore, the incumbent CEO of SNGPL can only be removed in accordance with the mandatory provisions of Section 190 of the Companies Act requiring three fourth of total membership of the Board being not inconsistent with Section 22 of the SOE Act;

(viii) The Board is obligated to delegate such powers to the CEO as are necessary to enable the CEO to perform the statutory duty of administration and management of the Company;

(ix) Such powers cannot be withdrawn but the CEO can be removed even without inquiry under Section 190 of the Companies Act. However, if the Board deems appropriate, the Board can initiate an inquiry against the CEO before removing him from office but without seizure of his powers. If immediate measures are required to be taken against the CEO, the only course available is to follow the procedure of removal of the CEO under Section 190 of the Companies Act;

(x) There is no provision in the law for the appointment of Acting CEO in the presence of existing CEO. As such, the acts of the Board of SNGPL of suspending the incumbent CEO and / or withdrawing his powers, appointing the Acting CEO and conferring him the powers of the CEO were unlawful, illegal and *void-ab-initio* being in violation of Section 190 of the Companies Act; and

(xi) The manner and conduct of the impugned 600th emergent meeting of the Board of SNGPL with less than one day notice under a vague and generalized agenda infringed various principles of good governance under the applicable law and as such the same was unlawful being not held in accordance with law.

55. For reasons recorded as aforesaid, this Petition is **allowed** in the following terms:

(i) The impugned 600th emergent meeting of the Board of SNGPL and all the impugned decisions taken therein are declared unlawful, illegal, *void ab initio,* of no legal effect and are accordingly set aside. All related and subsequent developments and acts of the Board emanating or arising from any act or decision taken in the 600th emergent meeting of the Board of SNGPL are also set aside. Consequently, the incumbent CEO is directed to forthwith assume his office with full powers as were immediately held by him before the date and time of the 600th emergent meeting of the Board of SNGPL;

(ii) Fresh meeting of the Board of SNGPL shall be convened, expeditiously, in accordance with law to take stock of all events since the date of the impugned meeting of the Board and necessary decisions may be taken strictly in accordance with law in the light of observations contained in this Judgement;

(iii) The fresh meeting of the Board shall include the specific agenda for initiation of inquiry or removal of the CEO and the Board may proceed in accordance with law; and

(iv) The connected contempt proceedings *inter se* the parties have been dropped for the time being in order to provide an opportunity to the incumbent CEO, members of the Board and all other concerned persons to act in accordance with law in the light of this Judgment. However, any willful deviation or deliberate disobedience of this Judgment by any person shall confer the right to any aggrieved person to initiate fresh contempt proceedings and in that event, all facts from the date of holding of impugned meeting of the Board can be brought under scrutiny.

(v) Order, accordingly.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

Announced in open Court on **26.06.2023**.

Judge