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JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.80447/2023

Muhammad Faisal Labar **Versus** Federation of Pakistan etc.

JUDGMENT

Date of Hearing:	15.12.2023
Petitioner by:	Mr. Shazib Masud, Advocate, alongwith Mr. Jawad Jamil Malik and Mr. Muhammad Asad Buttar, Advocates.
Respondents No.1 & 2 by:	Mr. Muhammad Anwar Khan, Assistant Attorney General.
Respondent No.3/PCB by:	Malik Muhammad Aslam, Manager Litigation, PCB.
Respondent No.4 by:	Mr. Muhammad Abid Hussain Saqi, Advocate.

Anwaar Hussain, J. Challenge has been laid to the appointment of respondent No.4, through impugned notification dated 24.11.2023, as Election Commissioner for holding and conducting election of the Chairman of the Pakistan Cricket Board (“PCB”) on the ground that respondent No.4, being a practising advocate, was obligated to get his licence suspended in terms of Rule 108-O of the Pakistan Legal Practitioners and Bar Councils Rules, 1976 (“the Rules”) to obtain his appointment as the Election Commissioner, which was not done, therefore, he cannot hold the said office. In addition, further challenge has been laid to the mandate given to respondent No.4 for composition of the Board of Governors (“BoG”) which, as per learned counsel for the petitioner falls within the purview of the functions assigned to the

Management Committee in terms of Paragraph 10 of the Constitution of Pakistan Cricket Board (“**the PCB Constitution**”).

2. Learned counsel for the petitioner submits that respondent No.4 is drawing salary to the tune of Rs.1 million per month alongwith other perks and privileges, which amounts to joining other service, therefore, Rule 108-O of the Rules is attracted. Adds that eligibility of respondent No.4 envisaged in terms of Paragraph 29 of the PCB Constitution is not questioned, however, it has to be read with Rule 108-O of the Rules and unless he gets his licence to practice law suspended, respondent No.4 cannot be appointed as the Election Commissioner. Avers that power of ensuring proper composition of BoG is only vested with the Management Committee and therefore, the same cannot be taken away from its purview and assigned to respondent No.4, as the Election Commissioner, through the impugned notification.

3. Conversely, learned counsel for respondent No.4, alongwith Legal Advisor of the PCB and learned Assistant Attorney General, submit that the case of respondent No.4 does not fall within the purview of Rule 108-O of the Rules inasmuch as he has not joined any other profession, business, service or vocation, rather, has only taken up temporary assignment as the Election Commissioner, for a period of three months only, with the specific role and function to hold transparent election for the Chairman of the Board and for composition of the BoG, within the said period.

4. Arguments heard. Record Perused.

5. In the light of the above-mentioned facts as well as arguments of learned counsel for the parties, following questions have been put forth for the opinion of this Court:

(i) Whether respondent No.4 was lawfully appointed as the

Election Commissioner under the PCB Constitution and was required to get his license to practice law suspended before or after his appointment?

- (ii) Whether this Court can assume the functions and/or powers of a regulator such as the Bar Council in case of failure of respondent No.4 to get his license to practice law suspended?
- (iii) Whether the task assigned to respondent No.4 for the composition of the BoG violates the PCB Constitution and the powers of the Management Committee?

6. The first two questions formulated hereinabove are inter-linked. It is the case of the petitioner that respondent No. 4 was required to get his license to practice law suspended in order to be appointed and for continuation to hold office of the Election Commissioner. The qualifications of the Election Commissioner are defined in Paragraph 29(2) of the PCB Constitution, which reads as under:

“(2) A person shall not be qualified to be appointed as Election Commissioner unless he is a former judge of the Supreme Court of Pakistan or a High Court, or a person, qualified to be a judge of the Supreme Court of Pakistan or the High Court or a person who has retired from government service in BS 22 or equivalent or above.”

(Emphasis supplied)

Before analysing the nub of the matter that relates to the qualifications of respondent No.4 in respect of appointment as the Election Commissioner, under the PCB Constitution, it is imperative to note that in terms of Paragraph 29(1) of the PCB Constitution, it is the Prime Minister of the Islamic Republic of Pakistan as Patron of the PCB who is competent authority to make the appointment.

Paragraph 29(1) of the PCB Constitution reads as under:

“29. Election Commissioner.—(1) There shall be an Election Commissioner of the Board appointed by the Patron, to discharge such functions as may be Prescribed.”

Said power has been exercised through the impugned notification not only in case of respondent No.4 but in all earlier temporary appointments to the said office. This Court sees no irregularity in this regard in the impugned notification. Therefore, reliance placed on case reported as "Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others" (**PLD 2016 SC 808**) by the petitioner side to contend that the patron had no authority is misplaced.

7. Adverting to the qualifications to be appointed as the Election Commissioner under the PCB Constitution, it has been noted that the qualifications of a person to be appointed as Judge of a High Court or the Supreme Court of Pakistan, as the case may be, has been made basis for the qualification to be appointed as the Election Commissioner. The qualification of a Judge of a High Court and Supreme Court have been stipulated under Articles 193 and 177 of the Constitution of Islamic Republic of Pakistan, 1973 ("the Constitution") respectively. Perusal of the said provisions of the Constitution renders it succinctly clear that practice as an advocate for 10 years, *inter alia*, is condition precedent, in case of an advocate, to be qualified to be elevated as Judge of a High Court in terms of Article 193, whereas Article 177 of the Constitution envisages that a person who, *inter alia*, has an experience of 15 years as practicing lawyer is eligible to be appointed as Judge of the Supreme Court. It is the existence of these qualifications which are required to become Judge of a High Court or the Supreme Court, as the case may be, and the suspension of the license to practice law would *ipso facto* eat away the eligibility to become the Judge of the said Courts and resultantly, eligibility to be appointed as the Election Commissioner, under the PCB Constitution. There is no denial that respondent No.4 possesses these qualifications. However, if the contentions of the petitioner are accepted, then respondent

No.4 will have to get his licence suspended from the Bar Council concerned, before seeking temporary appointment of Election Commissioner for three months. The suspension of the license would thus *ipso facto* denude respondent No. 4 to be qualified to be appointed as the Election Commissioner. Therefore, the said interpretation as pleaded by the petitioner, will not only defeat the eligibility criteria envisaged under Paragraph 29 of the PCB Constitution but by its very nature and character, the argument of learned counsel for the petitioner is self-destructive.

8. Even otherwise, admittedly, the petitioner has no exception as to the eligibility of respondent No. 4 to be appointed as the Election Commissioner rather only asserts that the respondent No. 4 is a practising advocate and has been carrying on his legal practice, after his appointment, whereas he is required to get his license suspended as his appointment as such amounts to joining some other business, service, profession or vocation in terms of Rule 108-O the Rules, which is reproduced hereunder:

“108-0. An Advocate having his name on the Roll of a Bar Council shall apply to the later that his certificate be suspended because he intends to join some other profession, business, service or vocation:

Provided that he may apply for restoration of his name on the roll of Advocates if he disassociates himself from such business, profession, service or vocation and provides an affidavit that he has not incurred any disqualification under the Legal Practitioners & Bar Councils Act, 1973 for enrolment as an Advocate during the period his certificate to practice remained suspended:

Provided further that if he fails to seek such suspension within one month of such engagement or employment in such other profession or service he shall be guilty of professional misconduct under the Legal Practitioners & Bar Councils Act, 1973 and his name shall also be removed from the roll of Advocates.”

(Emphasis supplied)

Rule 108 provides that an advocate shall apply to the Bar Council concerned that his license may be suspended as he intends to join

some other business, service, profession or vocation. It further lays down that failure to do so within a period of one month shall amount to professional misconduct under the Pakistan Legal Practitioners and Bar Councils Act, 1973 (“**the Act, 1973**”). Thus, it is clear that an advocate is required to get his licence suspended within a period of one month from date of said appointment and failure whereof may entail misconduct, if any. The petition is premature on this count alone as the said period has not elapsed yet. Even otherwise, proceedings on account of the misconduct is the power of the Bar Council concerned in terms of the provisions of the Act, 1973. When confronted, learned counsel for the petitioner submits that this Court is empowered to take cognizance of such misconduct. The argument is misconceived. Once it is abundantly clear that it is the Bar Council concerned that has been armed with the power to entertain and determine cases of misconduct, the constitutional jurisdiction cannot be exercised in a manner which amounts to usurpation and transgression into jurisdiction of the Regulators (i.e., Bar Council concerned). Moreover, in such an eventuality, it is left to the Bar Council concerned to first determine as to whether respondent No.4 was required to get his license to practice law suspended or not, keeping in view the nature and duration of the assignment accepted by him as the Election Commissioner of the PCB.

9. The matter can also be examined form another perspective. It is noted that the petitioner has filed this petition in the nature of *quo warranto* regarding respondent No.4 holding the office of the Election Commissioner under the PCB Constitution. The issue as to whether respondent No.4 was required to get the license to practice law suspended or not does not entail any bearing on the holding of the office of Election Commissioner, by respondent No.4, since the latter is admittedly qualified to be appointed to the said office.

Rather, the issue is converse in nature as it is respondent No.4 holding office of Election Commissioner which may or may not have any bearing on his status as the practicing advocate and his license issued by the respective Bar Council. This leaves no doubt in the opinion of this Court that the respondent No.4 validly holds the office of Election Commissioner under the PCB Constitution.

10. Adverting to the third question as to the responsibility conferred upon respondent No.4 regarding the composition of the BoG, it will be advantageous to reproduce the mandate given to respondent No.4, through the impugned notification that reads as under:

“2. The prime responsibility of the Election Commissioner, PCB shall be composition of BoG and the conduct of free and fair election of Chairman, PCB within the assigned period before 4th February, 2024. He shall take all required measures for completion of the aforementioned assigned tasks.”

It is the case of the petitioner that the Ministry of Inter-Provincial Coordination, Government of Pakistan, through notification dated 04.11.2023, while exercising its power under Rule 16(j) of the Rules of Business, 1973 read with Paragraph 48 of the PCB Constitution extended the tenure of the Management Committee and assigned the task of finalizing the BoG and hence, the impugned notification contradicts the former notification. Notification dated 04.11.2023 reads as under:

“F.No.1-18/2018-IPC(S-II). In continuation of this Ministry’s Notification of even number dated 5th July, 2023, the Federal Cabinet *vide* Case No.610/Rule-19/2023/937 dated 4th November, 2023 has considered the extension of the tenure of the Management Committee, PCB in terms of Rule 16(j) of the Rules of Business, 1973 & Article 48 of the PCB Constitution, 2014 and approved extension of (03) three months in tenure period of present Management Committee w.e.f. 5th November, 2023 with following stipulations:

- i. The Management Committee shall perform primary task of finalizing the BoG and conduct election of Chairman PCB at the earliest.

- ii. The Management Committee shall perform day to day affairs of PCB only and shall not make any policy decisions or high level appointments.
- iii. The Management Committee shall not be granted extension beyond three months.

Sd/

(Muhammad Fardos)

DEPUTY SECRETARY TO THE
GOVERNMENT OF PAKISTAN”

At this juncture, it would be advantageous to examine the composition of the BoG that has been provided under Paragraph 10 of the Constitution of PCB, which reads as under:

“10. Composition of Board of Governors. (1) There shall be a Board of Governors consisting of,-

- (a) Chairman;
- (b) four members being duly elected representatives of the Regions on the basis of rotation as per applicable Regulations, from amongst,-
 - i. Abbottabad Region;
 - ii. Bahawalpur Region;
 - iii. Deramurad Jamali Region;
 - iv. Faisalabad Region;
 - v. Federally Administered Tribal Area Region;
 - vi. Hyderabad Region;
 - vii. Islamabad Region;
 - viii. Karachi Region;
 - ix. Lahore Region;
 - x. Larkana Region;
 - xi. Multan Region;
 - xii. Peshawar Region;
 - xiii. Quetta Region;
 - xiv. Rawalpindi Region;
 - xv. Sialkot Region; and
 - xvi. Azad Jammu and Kashmir region,-
- (c) four members being representatives of Service Organizations or Departments as per applicable Regulations to be nominated by the relevant Service Organization or Departments;
- (d) two members to be nominated by the Patron in his discretion; and
- (e) Federal Secretary, Ministry of Inter Provincial Coordination, Government of Pakistan or any other officer nominated by him shall be an ex officio member and shall have the right to attend and speak at all meetings and otherwise take part in the proceedings of the Board of Governors, but shall not be entitled to vote, and for the first elections of the Board of Governors under this Constitution, four representative members of the Regions shall be from top four finishing teams of the latest Quaid-e-Azam Trophy Tournament, and the four representative members of Service

Organizations/Departments shall be from top four finishing teams of latest President's Trophy Tournament.

(2) Where a member being representative of the Region, Service Organization, or Department completes his tenure or his office falls vacant for any reason whatsoever or if he is removed by the appointing authority, such representative shall cease to be a member of the Board of Governors forthwith and any replacement appointed by the relevant appointing authority shall only hold office for the remaining term of the removed member.

(3) Any vacancy in the Board of Governors, for whatever reason, shall not prevent the holding of or invalidate the election of the Chairman.

(4) The term of members of the Board of Governors shall be three years.

(5) A member who fails to attend three or more consecutive meetings of the Board of Governors without a reasonable cause shall be liable to be removed by the Board of Governors and the resultant vacancy shall be filled as provided by or under the Constitution or by the Rules or Regulations:

Provided that for the removal of such member, the procedure provided for in sub-paragraphs (6), (7), and (8) below, shall apply:

Provided further that the member appointed under this sub-paragraph shall hold office for the residue term, which shall be treated as a full term.

(6) The Chairman may, after recording reasons in writing, refer any complaint, relating to the misconduct of a member or failure of a member to attend three or more consecutive meetings of the Board of Governors, to an adjudicator out of the Panel of Adjudicators maintained by the Board under Part VI of this Constitution.

(7) Any member, against whom a complaint is referred by the Chairman to the adjudicator, shall not be allowed to attend any meeting of the Board of Governors or any committee during the pendency of proceedings before the adjudicator.

(8) In case the adjudicator, after holding such enquiry as he thinks proper, finds the said member guilty of the charge alleged in the complaint, the said member shall render himself liable to be removed from his office by the Board of Governors:

Provided that the member proceeded against under this provision shall be entitled to a fair opportunity of hearing before the adjudicator:

Provided further that if removed, the said member shall be ineligible to be appointed a member of the Board of Governors for a period of four years in the case of misconduct and for a period of two years in the case of failure to attend three or more consecutive meetings of the Board of Governors.

(9) The Chief Operating Officer shall have the right to attend and speak at all meetings and otherwise take part in the proceedings of the Board of Governors but shall not be entitled to vote,

(10) There shall be a Secretary of the Board of Governors appointed by the Board of Governors to record and maintain minutes of the meeting and to perform such other functions as may be assigned by the Chairman.”

Perusal of Paragraph 10 of the PCB Constitution amply reveals that all the members of the BoG except the Chairman are either *ex-officio* members and/or to be appointed from the service organization or department and/or by the Patron, as the case may be, and the Management Committee and/or the Election Commissioner has no direct role in it to play. However, the composition of the BoG is not complete till the election of the Chairman is held. Once the Chairman has been elected, only then the composition of the BoG becomes complete. Thus, the primary task assigned to respondent No.4 as the Election Commissioner by using the words “composition of BoG and the conduct of free and fair election of Chairman, PCB” clearly refers to the conduct of free and fair election of the Chairman of the PCB to complete the composition of the BoG. Therefore, no illegality or irregularity has been committed through impugned notification.

11. For the foregoing reasons, this petition is devoid of any merits and hence, **dismissed**. No order as to costs.

(ANWAAR HUSSAIN)
Judge

Approved for reporting

Judge

Akram