

**IN THE SUPREME COURT OF PAKISTAN**

(Original Jurisdiction)

**Present**

**Mr. Justice Jawwad S. Khawaja**

**Mr. Justice Khilji Arif Hussain**

**Constitution Petition No. 59 of 2011 and CMAs Nos. 326 and 633 of 2012 and  
Crl. O. P. 94 of 2012 in Const. P. 59/2011.**

(Petition under Article 184 (3) of the Constitution)

Muhammad Ashraf Tiwana etc. .... Petitioner(s)

**Versus**

Pakistan etc. ... Respondent(s)

For the Petitioner(s): Mr. Afnan Karim Kundi, ASC (in both cases)  
Assisted by Barrister Momin Ali Khan (Advocate)

**In Const. P. 59/2011:**

For respondents-1&3: Mr. Anwar Mansoor Khan, Sr. ASC  
Mr. Naveed Akhtar, S.O. Finance Division

For respondents-2,5&6: Mr. Muhammad Akram Sheikh, Sr. ASC assisted by  
Barrister Sajeel Sheryar and  
Ch. Hasan Murtaza Mann (Advocates)

For respondent-4: Mr. Salman Akram Raja, ASC assisted by  
Malik Ghulam Sabir Advocate  
Mr. Sameer Khose Advocate  
Ms. Aneesa Agha Advocate  
Malik Ahsan Mehmood Advocate  
Ms. Zainab Qureshi Advocate

**In Crl. O.P.94/12:**

For respondent-1: Mr. Anwar Mansoor Khan, Sr. ASC

For respondent-2: Mr. Muhammad Akram Sheikh, Sr. ASC

*Amicus Curiae:* Nemo

For SECP: Mr. Muzaffar Ahmed Mirza, Dir. Litigation.

Date of Hearing: 09.04.2013

**ORDER**

**Jawwad S. Khawaja, J.** This petition has raised important questions of public importance relating to the enforcement of fundamental rights guaranteed in Chapter I of Part II of the Constitution. The salient aspect of this petition relates to the functioning and governance structure of the Securities and Exchange Commission of Pakistan (SECP) which is the apex regulator *inter alia*, of the corporate sector and the capital markets of the country.

2. Over the course of several days, we have heard and noted in detail, the submissions of learned counsel representing the parties. For reasons to be recorded we hold, declare and direct as under:-

3. That:-

- (a) the selection and appointment of respondent No. 4 namely, Muhammad Ali Ghulam Muhammad as Commissioner and Chairman SECP does not meet the requirements of the Securities and Exchange Commission of Pakistan Act 1997 (the SECP Act);
- (b) as a consequence, the notification No. SRO 21 (KE)/2011 dated 24<sup>th</sup> December 2010 appointing Mr. Muhammad Ali Ghulam Muhammad as Commissioner and Chairman SECP is set aside;
- (c) the Federal Government shall, without delay, make appointments to statutory positions in SECP which meet the requirements of the SECP Act including Sections 5, 6 and 7 thereof, in a credible, rigorous, transparent and open manner, through a selection and appointment process undertaken with due diligence and deliberation which manifestly and demonstrably ensures that the appointees meet the requirements of law as enunciated by precedent, including *mutatis mutandis*, the principles of law determined in the case of Muhammad Yasin vs. Federation of Pakistan (PLD 2012 SC 132);
- (d) the insertion of section 5(5) in the SECP Act through the Finance Act 2003 was violative of the Constitution and in particular Article 73 thereof;
- (e) Clause 3(1) of Chapter 11 of the SECP Service Rules (HR Handbook), which allow for termination *simpliciter* (without cause) of employees of SECP, is *ultra vires* the Constitution and *inter alia*, the SECP Act;
- (f) the above Clause must be replaced appropriately by provisions ensuring due process and adherence, *inter alia* to Articles 9, 10A, 14, 18 and 25 of the Constitution and which are consistent with the provisions of the SECP Act ensuring independent and objective decision making without fear or favour, required of an independent regulator;

- (g) the prayer in the petition for striking down the order dated 13.6.2011 terminating the employment of the petitioner is disallowed as not pressed, but without prejudice to his rights/remedies, if any, before a competent forum in accordance with law;
- (h) respondent No.1 (Federation) and respondent No.2 (SECP) shall bear the costs of the petitioner.

4. A copy of this Order shall be sent to each member of the Securities and Exchange Policy Board for action deemed appropriate by said Board in relation to the governance structure and decision making policies of SECP as per requirements of the SECP Act and for consideration on issues of policy-making highlighted by the present petition and for the effective performance of the Board's functions under the SECP Act, particularly section 21 thereof. The Board having, *inter alia*, the duty to "*oversee the performance of [SECP] to the extent that the purposes of the [SECP] Act are achieved*", shall look into this petition and documents placed on file and after making such further inquiries as may be deemed appropriate by it, submit within 45 days, a report as to the performance of the SECP.

5. A copy of this Order shall be sent to the Secretary, Ministry of Finance to enable the Federal Government to remain compliant with the law and legal principles enunciated by this Court, in terms of Article 189 of the Constitution. The Secretary (Finance) shall also look into this petition and documents placed on file (including those filed by the Ministry itself) to examine wrongdoings/shortcomings, if any, within the Ministry and the decision-making processes of the Federal Government under the SECP Act. A report in this respect shall be submitted in Court within 45 days.

**Judge**

**Judge**

Islamabad, the

Announced on 12.4.2013.

A. Rehman