

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN

Human Rights Case No.11827-S of 2018

IN THE MATTER REGARDING SELLING OF NATIONAL ASSETS
INCLUDING PIA AT THROWAWAY PRICE.

In attendance: Mr. Anwar Mansoor Khan,
Attorney General for Pakistan
Syed Asghar Haider, P.G. NAB
Mr. Farid-ul-Hassan, Spl. Prosecutor, NAB
Syed Nayyar Abbas Rizvi, Addl.A.G.P.
Mr. Naeem Bukhari, ASC
Dr. Musharaf Cyan, C.E.O., PIACL
(For PIA)
Ms. Asma Bajwa, Chief HR Officer, PIA
Mr. Bilal Hassan Minto, ASC
(For Mr. Shujaat Azeem)
Mr. Umar Lakhani, ASC
(In HRMA No.249/2018)
Raja Ikram Amin Minhas, ASC
(in HRMA-534/2018)
Kh. Azhar Rasheed, ASC

Mr. Junaid Younis, Ex. M.D. PIACL
Mr. Nadeem Yousafzai, Ex-M.D. PIACL
Sardar Mehtab Abbasi, Ex- Advisor to PM on
Aviation
Muhammad Saeed Tawana, Director Legal for
Auditor General
Mr. Nayyar Hayat, Ex. M. D. PIACL

Date of hearing: 03.09.2018

ORDER

IJAZ UL AHSAN, J- This matter emanates from
an application addressed to the Chief Justice of Pakistan
wherein serious allegations of favoritism and cronyism were
leveled against top officials of the Pakistan International
Airlines Corporation (PIAC). It was alleged that these officials
were holding office without lawful authority, were bent upon
selling national assets (PIAC) at throwaway prices, had closed

down profitable routes of the national airlines and given the same to other airlines, who were operating on the said routes and generating revenues that could have been earned by PIA by operating flights on these routes. In light of these allegations we found it expedient to take up the matter having come to the conclusion that it was a matter of public interest, involved fundamental rights of citizens and their enforcement. It was then fixed as Human Rights Case No.11827-S/2018 and notices were issued to all concerned to apprise the Court about the affairs of the PIAC.

2. In this case an application was also filed by the Pakistan International Senior Staff Association (PISSA) which was numbered as HRMA No.249/2018. PISSA challenged the appointment of the Chief Executive Officer of PIAC namely, Mr. Musharraf Rasool Cyan and other top management officials of the PIAC. Notices were issued on 12.04.2018 and vide order dated 08.05.2018 in exercise of its power to issue writs of quo warranto, this Court directed these top officials to file their respective replies so as to show, under what authority of law they purported to hold public offices. In pursuance thereof Mr. Musharraf Rasool Cyan filed a concise statement wherein, the procedure adopted for his appointment to the post of CEO of PIAC as well as his eligibility to hold the same was explained.

3. At the very outset we may observe that for the purposes of issuance of a writ of quo warranto, it has been held by this Court in several of its pronouncements that the

person laying information before the Court need not be an aggrieved person. Hence, we do not feel the need to go into this aspect of the law as highlighted by the learned ASC for Mr. Cyan. The power of this Court to entertain such petitions and pass appropriate orders is well known, well recognized and settled. Reference is made to Farzand Ali v. Province of West Pak. (PLD 1970 SC 98); Muhammad Naseem Hijazi v. Province of Punjab (2000 SCMR 1720); and Hamdullah v. Saifullah Khan (PLD 2007 SC 52).

4. The PIAC is a body corporate, established under the Pakistan International Airlines Corporation Act, 1956 (The Act). By way of the Pakistan International Airlines Corporation (Conversion) Act, 2016 the status of the Corporation was converted into a Public Limited Company incorporated under the Companies Ordinance, 1984. The Chairman of the Corporation as per Section 8 of the Act is appointed by the Federal Government and is also the Chief Executive of the Corporation. As a result of the Conversion Act, 2016, the office of the Chairman has been abolished. Now the post vests with the Chief Executive Officer (CEO). The appointment of the CEO is made by the Federal Government on the recommendation of the Board of Directors. The relevant law, under which appointments to Public Sector Companies such as the PIAC are made, is the "Public Sector Companies (Corporate Governance) Rules, 2013" (**the Rules**). It is not disputed that the said rules are applicable to PIAC.

5. Rule 2A of the Rules 2013 requires the appointments of CEO and Directors' of Public Sector Companies to conform to the 'fit and proper criteria' and in order to determine which, criteria have been spelt out. The appointment of the CEO however, is specifically dealt with under the Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015 issued by the Securities and Exchange Commission of Pakistan (SECP). For the purposes of the instant matter we intend to confine ourselves to the appointment process of the CEO and to that effect the *step by step* process as required by the law (Schedule I of the Guidelines, 2015), is paraphrased in the table below:

| Sr. | Steps | Requirement |
|-----|---|--|
| 1. | Development of Job profile | Developing a job description in light of the requirements and the 'fit and proper' criteria |
| 2. | Advertisement for the position | Publishing an advertisement in print media and posting the same on the website |
| 3. | Short-listing process | Board is to shortlist applicants from three sources: <ul style="list-style-type: none"> • Those shortlisted through database • Those who have applied against the advertisement. • Those derived through succession plan |
| 4. | Evaluation of Candidates | The Board is required to Evaluate the candidates on the fit and proper test and arrange due diligence from all the concerned govt. departments/agencies for e.g. SECP, FBR, NADRA, SBP, HEC etc |
| 5. | Interviewing Process | The Board shall conduct preliminary interview of the candidates taking into account numerous factors as enumerated in Rule 5 of the 1 st Schedule |
| 6. | Recommendations by the Board to the Competent Authority | Three candidates are then to be recommended by the Board to the Ministry (Aviation Ministry) and if the Ministry is not in concurrence with any of the candidates, reasons should be assigned thereof and the Board may either re-evaluate the candidates from the pool of available applicants or reinitiate the appointment process. |
| 7. | Appointment | After concurrence of the competent authority the Board shall appoint the Chief Executive |

6. Step four, as is discernable from the table above, pertains to evaluation of the candidates on the 'fit and proper criteria' which is spelt out both in the Rules of 2013 as well as the Guidelines referred to above (2nd Schedule of the Guidelines, 2015). Candidates aspiring for the position of CEO must conform to the 'fit and proper' test. It has been so emphasized by the SECP through various rules, regulations, circulars and pronouncements as well as the law for appointment against top management positions of Public Sector Companies. Therefore, it is fundamentally important that evaluation of applicants for the said post, in terms thereof, is properly and meticulously conducted, in an impartial and unbiased manner.

"Fit and Proper Criteria for Appointment as Chief Executive of a Public Sector Company"

1. In order to determine whether a candidate proposed to be appointed as a chief executive of a public sector company is fit and proper for the position, the following factors shall be taken into consideration:

- (1) Competence and capability – he must have the necessary skills, experience, ability and commitment to carry out the role efficiently and effectively.*
- (2) Probity, personal integrity and reputation – he must possess personal qualities such as honesty, integrity, diligence, independence of mind and fairness, and has the ability to represent a cohesive vision and strategy to all.*
- (3) Financial integrity – he must be capable to manage his debts or financial affairs prudently.*

2. The Board of the public sector company shall also ensure that that the person is not ineligible to act as a chief executive pursuant to section 201 read with section 187 of the Companies Ordinance, 1984.

3. The assessment of the above criteria shall have regard to the considerations set out below:

(1) Competence and Capability:

- (a) Competence and capability are demonstrated by a person who possesses the relevant competence, experience and ability to understand the technical requirements of the business, the inherent risks and the management process required to perform his role effectively as a chief executive.*

(b) *In assessing a person's competence and capability, the appointing authority shall consider matters including, but not limited to the following:*

- (i) *whether the person has the appropriate qualification, training, skills, practical experience and commitment to effectively fulfill the role and responsibilities of the position; and*
- (ii) *whether the person has satisfactory past performance or expertise in the nature of the business being conducted.*

(c) *To undertake the aforesaid assessment effectively, the following parameters are prescribed for consideration:*

(i) *He must*

- I. *Possess a graduate degree from a well-reputed institute or such other professional qualification relating to the principle line of business of the public sector company, including manufacturing, mining, science, technology, agriculture, social science, or any other field commensurate to the job, or*
- II. *Be a member of a recognized body of professional accountants, or*
- III. *Be a recognized businessman or professional with a postgraduate degree in business administration or public administration or finance or commerce or marketing or equivalent; and*

(ii) *He must possess demonstrated experience of not less than ten years:*


- I. *in governance or business administration or public administration or finance or commerce or marketing or any other field commensurate to the job in significant organizations with a commercial orientation, or*
- II. *as chief executive or at a senior management level in similar organizations that have commercial attributes, or*
- III. *at senior positions in relevant professional areas including, inter-alia, science, technology, finance, law, business, agriculture, social sciences, etc., or*
- IV. *in community or professional organizations; or*
- V. *at the level of member of governing body of a professional institute or as a head of department.*

(2) *Probity, Personal Integrity and Reputation:*

(a) *Probity, personal integrity and reputation are values that are demonstrated over time. These attributes*

demand a disciplined and on-going commitment to high ethical standards.

(b) In assessing a person's level of probity, integrity and reputation to hold a position of a chief executive, the appointing authority shall consider matters including, but not limited to the following:

- (i) whether the person is or has been subject to any adverse findings or any settlement in civil/criminal proceedings particularly with regard to investments, formation or management of a company or body corporate, or the commission of financial business misconduct, fraud, financial crime, default in payment of taxes or statutory dues, etc.;*
 - (ii) whether the person is or has been removed/dismissed in the capacity of an employee, director/chairman or from a position of trust, fiduciary appointment or similar position because of issues arising on account of his misconduct;*
 - (iii) whether the person is or has, directly or indirectly, i.e. through his spouse or minor children, been engaged in any business which is of the same nature as and directly competes with the business carried on by the company of which he is the chief executive or by a subsidiary of such company;*
 - (iv) whether the person has contravened any of the requirements and standards of a regulatory body, professional body, government or its agencies;*
 - (v) whether the person, or any business in which he has a controlling interest or exercises significant influence, has been disciplined, suspended or reprimanded by a regulatory or professional body, a court or tribunal, whether publicly or privately;*
 - (vi) whether the person has been engaged in any business practices which are deceitful, oppressive or otherwise improper (whether unlawful or not), or which otherwise reflect discredit on his professional conduct;*
 - (vii) whether the person has been associated as a partner or director with a company, partnership or other business association that has been refused registration, authorization, membership or a license to conduct any trade, business or profession, or has had that registration, authorization, membership or license revoked, withdrawn or terminated;*
 - (viii) whether the person has been a director, partner or chief executive of any company, partnership or other business association which is being or has been wound up by a court or other authority competent to do so within or outside Pakistan, or of any licensed institution, the license of which has been revoked under any law;*
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- (ix) *whether the person is free from any business or other relationship which could materially pose a conflict of interest or interfere with the exercise of his judgment when acting in the capacity of a director or chief executive or member of a governing body which would be disadvantageous to the interest of the public sector company; and*
- (x) *whether the person is a Pakistani citizen or a foreign national or both.*

(3) Financial Integrity:

- (a) *Financial integrity is demonstrated by a person who manages his own financial affairs properly and prudently.*
- (b) *In assessing a person's financial integrity, the appointing authority shall consider all relevant factors, including but not limited to the following:*
 - (i) *whether such person's financial statements or record including wealth statements or income tax returns or assessment orders are available;*
 - (ii) *whether the latest Credit Information Bureau report of the person shows no overdue payments or default to a financial institution; Provided that such a person will be treated as a defaulter if he has failed to repay his loan exceeding one million rupees to a financial institution or is a defaulter of a stock exchange.*
 - (iii) *whether the person has been and will be able to fulfil his financial obligations, whether in Pakistan or elsewhere, as and when they fall due; and*
 - (iv) *whether the person has been the subject of a judgment debt which is unsatisfied, either in whole or in part, whether in Pakistan or elsewhere.*
- (c) *The fact that a person may be of limited financial means does not in itself, affect the person's ability to satisfy the financial integrity criteria. 4. While making appointment of chief executive to a public sector company, the appointing authority shall conform to a merit-based selection procedure and shall also give due consideration to the following:*
 - (a) *Sectoral expertise*
 - (b) *Organizational awareness;*
 - (c) *An understanding of the role of the government as a shareholder;*
 - (d) *Financial literacy and business acumen, irrespective of the professional background;*
 - (e) *A knowledge of the statutory responsibilities of a chief executive;*
 - (f) *The capability for a wide perspective on issues; and*
 - (g) *Leadership qualities."*

7. In addition to the criteria for appointment of CEO the Rules 2013 provide for the Responsibilities, powers and functions of the Board of Directors of a public limited company. It is clear from the language thereof that the Board owes the company and its stakeholders a fiduciary duty, performance whereof is solely for the best interests of the company. Rule 5(2) makes the Board responsible for the planning, succession and appointment of the Chief Executive of the company and in doing so it has to evaluate the potential candidates on the 'fit and proper criteria' as reproduced above. It cannot be over emphasized that in undertaking such evaluation, the board must act independently, transparently and in a totally impartial and unbiased manner so as to select the best and most suitable candidate purely and strictly on merit.

8. Apart from informing the stakeholders of all the material events the Board has been mandated to create a 'code of conduct' for functioning of the Board as well as all senior and/or junior management of the company. Strict compliance with the fundamental principles of probity, propriety, objectivity, integrity and honesty has been cast upon the Board so as to make sure that the public assets are not plundered or that no situation entailing a conflict of interest catering to personal benefit, or vested or political interest arises. To this end all the directors are required to declare their interests in the shape of a 'register of interests' coupled with a declaration to the effect that they would not

accept any compensation, remuneration or other benefits in any shape or form, on any account, apart from the remuneration that they receive from the company. The Board is also required to formulate policies to minimize corruption, identification and monitoring of risks, procurement of goods as well as services, including but not limited to acquisition of assets along with disposal of these assets and other investments. Even the services rendered by the company as a public service obligation have to be quantified whereafter appropriate compensation is requested from the Government.

9. In the above backdrop, we have carefully examined the process and various stages which Mr. Cyan's appointment went through or ought to have gone through under the law and did not. We also directed Mr. Cyan and his counsel to define and justify his appointment. He was specifically confronted with the allegations and given ample opportunity to explain the deviations from law and procedure which had prima facie occurred in the process of his appointment.

10. The irregularities and illegalities in the appointment of Mr. Cyan, as alleged in HRMA No.249/2018 and the replies thereto given by Mr. Cyan, are reproduced in the table below:

| <i>Allegations</i> | <i>Reply of Mr. Cyan</i> |
|--|--|
| Mr. Cyan was a staff officer of Mr. Mehtab Abbasi (Advisor to PM on Aviation) in 1998 and was granted undue favour | Denied that he was appointed at the behest of Mr. Abbasi |
| He has no aviation industry experience and his basic degree is MBBS. | Denied that his basic degree is MBBS. |

| | |
|--|---|
| Dispute regarding age of Mr. Cyan as his matriculation certificate shows one DOB whereas the CNIC reflects another | A suit for declaration has been filed by him for correction of the DOB on the Matriculation certificate which is pending adjudication |
| Mr. Cyans' appointment is in violation of the PSC (Corporate Governance) Rules, 2013 | Simply stated that his appointment is in line with the relevant law, rules & guidelines. |
| Salary of Mr. Cyan is exorbitant and not in line with others holding the same posts | The same had been approved by the Board and comparatively, is lower than CEOs' of other PSCs' |

11. The starting point of Mr. Cyan's appointment was the advertisement dated 20.05.2017, published by the PIAC for appointment of the CEO. Educational qualification and work experience, as required by the advertisement were:

CAREER OPPORTUNITY

PIA, the national airline of Pakistan, is implementing its focused revival strategy to steer the company on path of growth and success. The airline requires a highly experienced, dynamic and passionate professional with strong operational, financial and commercial acumen to be hired as a full time Chief Executive on contract basis. The Chief Executive position shall be the focal position to implement the turnaround strategy for the national carrier.

The ideal candidate is required to share a passion for reshaping PIA and living it to stand in the league of major national airlines. The selected person shall be required to develop and lead a major Change Management Program to address PIAC's financial, operational, commercial and cultural turn-around including guiding and motivating its people to deliver their best performance, as a team. The successful candidate will also be expected to have excellent people management and communication skills with a 'can do' attitude.

CHIEF EXECUTIVE

a. EDUCATIONAL QUALIFICATIONS:

- i. Possess a graduate degree from a well-reputed institute or such other professional qualification relating to the principle line of aviation business.
- OR
- ii. Be a recognized businessman or professional with a Postgraduate degree in Business Administration or Public Administration or Finance or Commerce or Marketing or equivalent from any recognized institute.

b. WORK EXPERIENCE:

Minimum 25 years of working experience preferably in international airlines of repute with minimum of 10 years experience in a senior professional position in relevant professional areas including inter-alia, science, technology, finance, law, business, social sciences etc. Having an established worldwide network in Airline industry.

c. SKILLS / SPECIAL REQUIREMENTS:

- Strategic Management
- Professional Business Skills
- Leadership Qualities
- Vision to steer the organization towards success and growth

d. PROFESSIONAL TRAINING / COURSES:

- Strategic Management
- Leadership Qualities
- People Management & Delegation
- Problem Solving & Decision Making

e. JOB DESCRIPTION & RESPONSIBILITIES:

- Envision, lead and encourage the efforts of entire organization towards achieving overall business objectives. Responsible for devising corporate strategies, formulating growth plans and ensuring maximum returns for all stakeholders.
- Laying a foundation to achieve long term benefits through strategic policy making and continuous improvement for future development of organization. Ensure that the objectives of the organization, as agreed by the board, are fully, promptly and properly implemented.
- Shaping organizational activities and utilizing full potential of all employees to attain highest standards of service at all levels. Creating a congenial and user friendly work environment for all employees of the organization.
- Fostering a culture of employee best practices, work ethics and zero tolerance for corruption. Aligning established policies, procedures and work practices to achieve effectiveness and efficiency in all areas.

f. OPERATIONAL RESPONSIBILITIES:

- Allocation of funds / capital to organizations priorities and ensure that the necessary financial and operational data are made available for the annual report and its external audit.
- Establish roles for the top layer of the organization covering duties, responsibilities and resources. Develop a skilled and capable top management team. Develop and implement a strategy to attract and retain existing and potential business. Propose long term operational and corporate growth plans covering the development of routes, fleet, major facilities and revenue.
- Inductinate systems leading to the production of detailed plans and allocated budgets for business units and supporting functions that are required throughout the network.
- To be fully aware of all safety and service quality requirement, and to be responsible for the outcomes and findings of all Internal & external safety/quality audits.
- To ensure effective functioning of HSEQ Steering and Working Committees. Assume responsibility for recording and reporting of all occupational hazards, accidents, incidents, near miss cases to the concerned agencies as per the Management approved system procedures.

g. EXTERNAL RESPONSIBILITIES:

- Develop and maintain the reputation and image of the corporation in official, financial and public circles and represent PIAC at official functions. Also develop and maintain relationships with interfacing government departments, Civil Aviation Authority and other international and domestic organizations/agencies at senior management level for obtaining bilateral agreements and other facilities/services.
- Ensure adequate representation at International Civil Aviation Organization (ICAO) and International Air Transport Association (IATA) meetings. Ensure that PIAC's interests are appropriately represented on the platforms of joint venture or subsidiary companies and high image of PIAC at all media forms.

h. PAY PACKAGE

- Successful candidate will be offered market based salary and fringe benefits.

NOTE:

- The position is merit based
- The selected candidates will be given employment on contract basis for a period of two (2) years, which may be extended.
- The applicant shall be required to complete and sign Application Form (available on PIA website) and furnish detailed CV. However at the time of interview the eligible candidate will be required to bring original & photocopies of the degrees / testimonials duly verified by the Higher Education Commission or the professional body or association, whichever is relevant.
- The applicant shall also submit a declaration on a non-judicial stamp paper of requisite value (available on PIA website) that he is not ineligible to act as a Chief Executive, in accordance with the provision of the ordinance and the rules.
- The application must reach at the following address not later than 15 days from the date of publication of this advertisement.

APPLICATION PROCEDURE/GUIDELINES:

Applications are invited on the prescribed FORM available (free of Cost) from the PIA Recruitment & Placement Office at Karachi, and from other PIA Offices in different stations besides being available on PIA's website: www.piac.aero/careers

Interested candidates should send their application forms along with the said declaration, CV, national identity card and 02 recent passport size photographs accompanied by Pay Order of Rupees 1000/- (non-refundable) in the name of PIAC (PIA NTN No. 080-3450-8) through courier to the following address not later than 15 days from the date of publication of this advertisement

**MANAGER RECRUITMENT & PLACEMENT,
NEAR PIA TRAINING CENTER, KARACHI AIRPORT 75200
Email: Jobs@piac.aero Contact No. 021-99044295**

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International Airlines

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UAN: 00-92-21-111-786-786

12. It is essential that suitability and eligibility of a candidate is ascertained through an objective procedure and appointment thereof needs to have a nexus with the object of the job. This principle was laid down by this Court in Muhammad Yasins case¹ in the following terms:

“36. To test the validity of the appointment process in this case, it would be useful to adopt a test based on the following considerations:

(a) whether an objective selection procedure was prescribed;

(b) if such a selection procedure was made, did it have a reasonable nexus with the object of the whole exercise, i.e. selection of the sort of candidate envisaged in section 3 of the Ordinance;

(c) if such a reasonable selection procedure was indeed prescribed, was it adopted and followed with rigour, objectivity, transparency and due diligence to ensure obedience to the law.”

We find that the antecedents of Mr. Cyan are lacking on all of these counts. As per the *Curriculum Vitae* (CV) of Mr. Cyan (HRMA No.403/2018) provided by him in his concise statement, his basic degree is MBBS. Before being appointed as the CEO of PIAC, Mr. Cyan was working as a Research Assistant in Georgia State University where he had received his Ph.D degree in Economics. No educational qualification worth anything relating to the Aviation Industry (as required by the advertisement) was possessed by him. The only relevant qualification shown by him in this regard pertains to a one-month Corporate Aviation Management course, shown to have undertaken from May 2017 till June 2017 i.e. the time around which the advertisement was floated. This is obviously of no help to Mr. Cyan’s case. It shows a desperate

¹ Muhammad Yasin Versus Federation of Pakistan [PLD 2012 SC 132]

attempt at “window dressing” a candidate whose qualification for the job was seriously deficient.

13. As far as his work experience is concerned the same is also not in line with what had been required by the advertisement for the post of CEO of a company in the aviation business which happened to be the national flag carrier of Pakistan. It is noteworthy that PIAC for which a CEO was being appointed had been running in huge losses. It had to be rescued, restructured and overhauled by the Federal Government at great public expense. He had no experience whatsoever in the aviation industry let alone in salvaging companies which were in dire financial trails which fact is discernable from the Employment application as well as the CV attached by Mr. Cyan in his concise statement. In Asraf Tiwanas case² this Court while dealing with a similar issue, examined the issue of verification of CVs in the following manner:

“Once again there is nothing at all on the record and there was no submission made by learned counsel for the respondents which would show that any inquiry let alone due diligence was undertaken to ascertain the correctness or otherwise of the contents of the CVs. So much so, even the most cursory exercise to verify such contents from any source mentioned in the CVs, was not attempted by the Government. In the absence of such due diligence, we are clear that it would be impossible to ascertain objectively the qualifications of recommendees in the Summary as to integrity, expertise, experience and eminence etc. as required by section 5(1) of the Act.”

14. After the process of advertisement the next logical step for a valid and lawful appointment is the short-listing process which is to be conducted by the Board. Mr. Cyan claimed to have been shortlisted by a duly constituted

² Muhammad Ashraf Tiwana Versus Pakistan & Others [2013 SCMR 1159]

“Selection Committee”. As a matter of fact the self-styled committee that shortlisted him consisted of the Chairman/Secretary (Mr. Irfan Ellahi), Mr. Tariq Pasha and Mr. Mahtab Abbasi, the then Advisor on Aviation to the Prime Minister who was a stranger to the Board or any Committee constituted by it. It is clear and obvious to us who handpicked this committee and why. Neither Mr. Abbasi nor the learned counsel for Mr. Cyan has denied that Mr. Abbasi was indeed a member of the Committee that short listed Mr. Cyan, and participated in its meetings. It has however been urged that he was just an observer and did not participate in its deliberations. We are neither convinced by the said explanation nor are we willing to believe the same. It is settled law that the presence of a stranger in a Board Meeting vitiates the entire proceedings specially so when the stranger is in a position of strength and can influence the outcome of the proceedings. In the instant case, the constitution, working and membership of this supposed ‘Selection Committee’ was ex facie a highly questionable and dubious exercise in itself. It does not figure anywhere in the Law nor in the Rules or Guidelines. In such circumstances *“The Court has also to see if statutory provisions have been violated in making the appointment. The invalidity of appointment may arise not only from want of qualifications but also from violation of legal provision for appointment.”*³

³ Muhammad Naseem Hijazi Versus Province of Punjab [2000 SCMR 1720]

15. The importance of following the specific criteria for appointment provided by the Statute has been elaborated by this Court in Ghulam Rasools case⁴ where it was held that *“the matter of appointment of heads of statutory bodies, autonomous/semi-autonomous bodies, corporations, regulatory authorities etcetera are governed under specific statutory provisions which cannot be overlooked or substituted by some other mechanism. We have noted that various Acts/Ordinances lay down a specific criteria/qualifications for high-level appointments and empower the Federal Government to make such appointments”*.

16. Moreover, Mr. Cyans’ statement that the meeting was attended by two Board Members too is contrary to the record as one Member of this Selection Board was Mr. Mehtab Abbasi, Advisor to the Prime Minister for Aviation as is expressly stated in the Board of Directors Minutes of 13th Meeting held on 07.07.2017 for appointment of the CEO. To say that the Advisor to the then Prime Minister was an innocent onlooker, did not participate in the meeting nor exercised any influence despite his association with Mr. Cyan, borders on naivety.

17. In addition to the grave illegalities pointed out above there is nothing on record to show that necessary due diligence as per the evaluation requirements of candidates qua the PSC Guidelines, 2015 was undertaken by the Board.

⁴ Ghulam Rasool Versus Govt. of Pakistan [PLD 2015 SC 6]

There is no record of the workings of the so called 'Selection Board' and whether in evaluating Mr. Cyans' eligibility, the 'fit and proper' criteria was adhered to. Also, had the due diligence been conducted as per the PSC Guidelines, 2015, the discrepancy of Mr. Cyans' date of birth would have come to fore. We are surprised to note that In contravention of the PIAC manual, instead of asking Mr. Cyan to follow the prescribed procedure, an affidavit was obtained from him to the effect that the date of birth in the computerized national identity card (CNIC) was correct as opposed to the other record. The said discrepancy was condoned as a special favour and in violation of the procedure consistently followed by PIAC.

18. No interview of Mr. Cyan was conducted by the Board as required by the Guidelines. This fact is corroborated by the Minutes of the 14th Meeting of the Board of Directors where two of the Members of the Board objected to the selected candidate as they were denied the opportunity to shortlist and interview the candidates, but to no avail. The candidate ear marked for selection by those who were calling the shots had already been selected and the board was to be used as a rubber stamp only.

19. After the so-called and illegal short-listing PIACL requested the Aviation Division, vide letter dated 21.07.2017, for onward submission of names of candidates to the Federal Government. The letter of the PIAC Chief Human Resource Officer dated 21.07.2017 is available on record. However,

neither the summary sent by the Aviation Division to the Prime Minister is appended nor the actual approval is available on record. The approval was however communicated to PIAC vide letter of the Aviation Division dated 10.08.2017 whereas the approval accorded by the Cabinet Division was given on 22.08.2017. On this score alone, the appointment of Mr. Cyan is *ex facie* contrary to the law as elucidated by a pronouncement of this Court in the case of Mustafa Impex Versus Government of Pakistan & Others **[PLD 2016 SC 808]**.

20. Furthermore, the contract period as provided in the advertisement was 2 years (further extendable). The letter of appointment issued to Mr. Cyan also stipulated a 2 year contract. The contract appended with the concise statement of Mr. Cyan too, reflects that it was for a period of 2 years extendable to another 2 years. In stark contrast to the same, the terms of the contract were unauthorizedly and unilaterally changed by the Board of Directors to 3 years vide minutes of the 19th Meeting held on 08.02.2018. This is clearly contrary to the policy of the government as well as the advertisement, published in the newspapers inviting applications from candidates for appointment against the post of CEO of PIA.

21. We had directed the Auditor General of Pakistan to conduct an independent audit of the affairs of PIAC. Independent confirmation of the abovementioned gross illegalities has been done by the Auditor General of Pakistan

in his preliminary report. In addition to the irregularities highlighted above, misuse of corporate resources was also highlighted by the Auditor General Pakistan (AGP). It has been recommended by the AGP that:

- The Employment of Mr. Cyan be terminated without delay;
- Immediate recovery of salary and emoluments be initiated; and
- The case be referred to independent agency to probe the external pressure applied by the Advisor to the PM on Aviation, namely Mehtab Abbasi, in effectuating this irregular appointment.

We are therefore, in no manner of doubt that Mr. Cyan was selected in an arbitrary, illegal and unfair manner which was clearly in violation of law and the rules. The rules and regulations were ignored, the Board of Directors was virtually bypassed by using it as a mere rubber stamp and the candidate who enjoyed the goodwill of a politically strong and well placed individual was hoisted at the head of a very large government Corporation worth billions of rupees, which he was not qualified to run. The result is not surprising. A Corporation and a national asset which was already running into huge losses, is in dire straits and on the verge of collapse. We find this to be the worst form of cronyism at public expense without any regard to the interest of the institution or the people of Pakistan who have the largest stake in their national airline.

22. Selection of persons to be appointed against senior positions bereft of merits has been frowned upon by this Court in the past, which went on to observe in Ashraf Tiwanas case *supra* that “We wish to add that issues of

appointments to senior positions in public bodies, which have been highlighted in this petition and in other cases which have come up before us, have under-scored the need for a transparent, inclusive and demonstrably fair process for the selection of persons to be appointed to such senior positions. The Federal Government may consider the necessity of putting in place independent mechanisms and of framing open, fair and transparent processes so that the objectives for which public bodies are established can be efficiently achieved and at the same time the pernicious culture of arbitrariness, favouritism and nepotism is eliminated.”

23. Unfortunately and regrettably favouritism and cronyism was allowed to prevail over merit and competence and a national asset was treated like a personal fief.

24. Until and unless strict compliance with the provisions of the statute and rules governing appointment to these senior positions are adhered to in letter and spirit, such appointments will always be subject to challenge on the ground of arbitrariness and non-compliance with the law and settled principles. It cannot be stressed enough that the Board of Directors is a body that owes a fiduciary duty to the stakeholders of the company and its role, as explained above, is not of a mere by-stander. The role of the Board envisaged by law is central and pivotal, and has clearly been articulated in the Rules, 2013 whereby the Board has an active duty to safeguard the rights of its stakeholders. Such duty needs to be performed by employing independent and honest

individuals with training and experience in the relevant field, with the highest level of integrity, probity and honesty.

25. Personal bias, political affiliations and a lack of empathy displayed by those mandated to make these appointments defeat all ideals, hopes and mechanisms of good governance in place. In Ashraf Tiwanas case this Court has encapsulated this entire problem as follows:

"It has by now become well settled that Courts will look into the process of appointments to public office. It is the process which can be judicially reviewed to ensure that the requirements of law have been met. In the case of Muhammad Yasin supra, the process of appointment to public office has been made the subject of judicial review to ensure adherence to the command of the law. This is also a requirement of good governance and has been a subject of comment from ancient times. Abu al-Hassan al-Mawardi (d. 1058 A.D), the famous scholar from Baghdad devoted a substantial portion of his 11th century treatise on constitutional law, the al-Ahkam al Sultaniyyah, to the qualifications for holding public office. These are universal principles of good governance and are reflected in sections 5 and 6 of the Act which lay down stringent criteria for the kind of person the Federal Government may appoint as Commissioner/Chairman SECP. Section 5(1) of the Act specifies that a Commissioner "shall be a person who is known for his integrity, expertise, experience and eminence in any relevant field, including the securities market, law, accountancy, economics, finance, insurance and industry." Under the law, the federal Government has the authority to appoint the Chairman and Commissioners of SECP. The Federal Government, however, has no absolute and unbridled powers in this behalf. It is constrained by the aforesaid requirements of the Act. We have come a long way from the days of the whimsicality of Kings and Caesars, such as Caligula who could conceive of appointing his horse Incitatus as Consul of Rome. The element of subjectivity and discretion of the Government has been severely limited by the legal requirement that an appointee must be a person having integrity, expertise, eminence etc. This requirement imposes a duty on the Federal Government to put in place a process which ensures that the requirements of the law are met."

We note with regret that clear, unambiguous and unequivocal pronouncements by this Court on these issues have fallen on

deaf ears and no heed has been paid to the same which has led to disastrous and cataclysmic consequences. PIAC is a grim example of the same.

26. Above are the detailed reasons for our short order of even date. The same for ease of reference is reproduced below:-

"For the reasons to be recorded later, we, inter alia, hold that Mr. Musharraf Rasool Cyan, the Chief Executive Officer (CEO) of Pakistan International Airlines Corporation Limited (PIA) was not qualified to be appointed on such post. Besides, the procedure adopted for his appointment does not conform to the law and rules on the matter. As a consequence whereof, this application is allowed and his appointment is set aside with immediate effect. The Federal Government is directed to take necessary steps to appoint a new CEO of PIA strictly on merit and in accordance with law."

C.M.A. No.5566 of 2018 in S.M.C. No.23 of 2018:-

26. As the main case, i.e. S.M.C. No.23 of 2018 has already been disposed of *vide* order dated 30.06.2018, therefore this application has lost its relevance and is accordingly disposed of.

H.R.M.A. No.534 of 2018:-

27. Learned counsel wants to withdraw this application. Dismissed as withdrawn.

ISLAMABAD, THE

3rd of September, 2018

ZR/*

NOT APPROVED FOR REPORTING

1 22/9/18