

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

“W.P No.1109 of 2017”

Uzman Sardar
Versus
Federation of Pakistan & others

Petitioner By: R.M. Mudassar Iqbal, Advocate,

Respondents No.2, 7 to 11: Mr. Waqas Aamir, Advocate

Date of hearing: 20.07.2020

Ghulam Azam Qambrani, J: Through this petition, the petitioner, Ms. Uzma Sardar, has invoked the jurisdiction of this Court, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

“In view of the above said facts and grounds, it is most humbly prayed in the interest of justice that his Hon’ble Court may take judicial notice of the above facts and issue writ of quo warranto requiring the record from respondents No.1 to 6 regarding appointment of the respondents No.7 to 11.

Kindly pass an order requiring the respondent’s No.7 – 11 as to show under what authority of law they claim to hold the offices of members & Chairman of the commission, under NTC Act, 2015.

It is further requested that kindly on perusal of record, declare that the entire process of selection of the respondent No.7 to 11 is irregular and illegal, null and void, and the members may be stopped from performing under the National Tariff Commission Act, 2015 with immediate effect. The prayer is being made in the interest of Justice.”

2. Brief facts as narrated in the petition are that respondents No.7 to 11 were appointed as Members of the National Tariff Commission (hereinafter be called as the “**Commission**”) under Section 4 of the National Tariff Commission Act, 2015 (hereinafter

be referred to as the "**Act of 2015**") whereas respondent No.2 was appointed as the Chairman of the Commission, hence instant petition.

3. Contention of the petitioner are that appointments of the respondents were made in violation of Section 4 of the Act of 2015; that respondent No.7 does not possess the requisite Master Degree as required under Section 5(2) of NTC Act, 2015; that his appointment was made on probation for one year by the Prime Minister, but the Notification for appointment has been issued in denial to Prime Minister approval contained in F. No.3(3)/2015-A-III dated 03.09.2016 without reference to the probation. Next contended that respondent No.7 does not work in any organization dealing with Trade Remedy Laws and have experience in trade related work and administration of Trade Remedy Laws and that the Prime Minister has not approved the name of respondent No.3 for his appointment as Chairman but his notification has been issued contrary to the approval of the Prime Minister. It is also contended that respondent No.11 holds dual nationality, as such; he does not qualify under Section 5 of the Act *ibid*. Lastly prayed for acceptance of this petition.

4. Learned counsel for the respondents has argued that the petitioner has not disclosed the fact that Mr. Shahid Mehmood Khan Advocate has filed identical quo warranto writ petition No.905/2017 in the Lahore High Court Lahore against the appointment of respondent No.7 to 11 under section 3 and 5 of the NTC Act, and during pendency of said petition, petitioner filed the present petition on the same grounds; that the instant petition has been filed to delay and frustrate the proceedings of the Commission and to fight the battle of the importers of alleged dumped imports on other fronts which some of them had already waged by the process of Writ petitions, *ibid*. It is submitted that the question of conduct and motive of the petitioner is considered in number of cases by the Hon'ble Supreme Court and it was held that "*in the matter of writ petitions seeking the issuance of a writ of*

qua-warranto, the grant of relief of quo-warranto is not a matter of course and the conduct and motives of the petitioner can be looked into by the Courts when such a prayer is submitted." Next submitted that without prejudice to the forgoing and without conceding, it is submitted that the instant petition is barred by laches as the impugned appointments were made under the National Tariff Commission Act, 2015 on 05.09.2016 while the petition has been filed on 22.03.2017 with the delay of 06 months from the appointments of the respondents, hence the instant writ petition is liable to be dismissed.

5. Arguments heard, record perused.

6. Perusal of the record reveals that identical writ petition No.1528/ 2017 was filed against the respondents, which was dismissed vide judgment dated 19.04.2018 with the observation that *"the cases of the respondents were placed before the Federal Cabinet and the latter gave ex-post facto approval. The ex-post facto approval by the Federal Cabinet was in accordance with law having the effect of regularizing the appointments of the respondent."*

7. Now again the petitioner has challenged the appointment of the respondents. Admittedly, the respondents were appointed prior to the rendering of the judgment of the august Supreme Court of Pakistan in the case reported as Messrs Mustafa Impex, Karachi and others Vs. The Government of Pakistan through Secretary Finance, Islamabad and others, (PLD 2016 Supreme Court 808). It is pertinent to mention here that after pronouncement of the said judgment, the case with regard to the appointments of the respondents was placed before the Federal Cabinet, whereby ex-post facto approval was granted. It is worth to note here that until the law was expounded by the apex Court of the country, the appointments in all the statutory organization were made exclusively by the Prime Minister without seeking approval from the Federal Cabinet. In the instant case, ex-post facto approval by the Federal Cabinet was in accordance with law having the effect of

regularizing the appointments of the respondents. Therefore, in view of the above, the second writ petition on the same subject matter is not maintainable. Further, the present petition in the nature of quo-warranto is an extra-ordinary discretionary jurisdiction. This Court is not bound to exercise such jurisdiction in each and every case.

8. In view of what has been discussed above, this petition having no force is **dismissed**.

~~Ghulam Azam Qambrani~~
Judge ✓

Announced in open Court on this 29th day of July, 2020.

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~~Wajid~~
Judge

Rana. M. Iqbal