

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

W.P. No.533/2020
Ch. Muhammad Shafi
vs.
P.M. of Pakistan through Principal Secretary, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	26.08.2020	

Vide my detailed judgment of even date passed in W.P.
No.2250/2019 (Parvaiz Akhter Bhatti vs. Federation of Pakistan, etc.)
the instant writ petition is hereby **PARTLY ALLOWED.**

(MOHSIN AKHTAR KAYANI)
JUDGE /

Announced in open Court on: 17.09.2020.

JUDGE

Khalid Z.

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 2250/2019

Parvaiz Akhter Bhatti vs. Federation of Pakistan, etc.

W.P. No.3512/2019

Hassan Immad Mohamedi vs. Federation of Pakistan, etc.

W.P. No.1095/2017

Asad Ahmad Jaspal vs. Federation of Pakistan, etc.

W.P. No.4249/2019

Muhammad Munawar, etc. vs. Federation of Pakistan, etc.

W.P. No.171/2020

Rashid Mehmood, etc. vs. Federation of Pakistan, etc.

W.P. No.476/2020

Sultan Khan Naeem, etc. vs. PTV through its Managing Director, etc.

W.P. No.533/2020

Ch. Muhammad Shafi vs. P.M. of Pakistan through Principal Secretary, etc.

W.P. No.1610/2020

Uzma Naveed Ch. vs. Federation of Pakistan, etc.

W.P. No.1639/2020

Samina Mir vs. Federation of Pakistan, etc.

Criminal Original No.47-W/2020

Hassan Immad Mohamedi vs. Arshad Khan, Chairman PTV, Islamabad, etc.

and

Objection Case No.7150/2018

Asad Ahmad Jaspal vs. Federation of Pakistan, etc.

Petitioners by:

M/s Ali Nawaz Kharal, Danish Aftab, Rana Rashid Javed, Raja Muqsit Nawaz, Hazrat Younis, Muhammad Waqar Rana, Ajmal Ghafaar Toor, Afzal Qadeer Satti, Muhammad Umair Baloch, Saif-ur-Rehman Shah, Bukhari, Shah Khawar, Barrister Qasim Nawaz Abbasi.

Respondents by:

M/s Ahmad Awais, Shahid Anwar Bajwa, Tipu Salman Makhdoom, Syed Ishfaq Hussain Naqvi, Moin Ahmad, Faiza Naseer, Qamar Inayat Raja, Muhammad Nazir Jawwad, Syed Hamid Ali Shah, Arooj Zaib Abbasi, Ch. Arshad, Zeeshan Ali Syed, Advocates for

Board of Directors, PTVC in respective writ petitions.

Mr. Shahid Mehmood Khokhar, Advocate for MoIB.

Ch. Muhammad Nawaz and Ch. Arshad Farooq, Advocates for SRBC.

Mr. Ibrar Saeed, Advocate for SECP.

Barrister Muhammad Mumtaz Ali, AAG.

Yasir Shakeel, AD/M-II, S.O. Litigation, MoIB.
Hussain Wazir, Dy. Director, MoIB.

Muhammad Javaid, Admin Manager, PBC.

Dates of Hearing: 10.07.2020, 21.08.2020, 22.08.2020 & 26.08.2020

JUDGMENT

MOHSIN AKHTAR KAYANI, J: Through this single judgment, I intend to decide the captioned writ petitions having similar questions of law and facts along with criminal original and an objection case.

2. The petitioners are mainly aggrieved by the:

- Appointment of Director/Chairman, Board of Directors, PTVC;
- Appointment of Managing Director, PTVC;
- Appointments of the Independent Directors;
- Appointments made through the head hunting firm;
- Appointments of Amir Mehmood/Managing Director of PTVC, Ms. Qutrina Hossain/Chief News & Current Affairs, and Khawar Azhar/Head of Content & Marketing PTVC;
- Appointment of Lt. Col. Hassan Immad Mohamedi as Director Special Assignment in PTVC;
- Decisions of Board of Directors as per Meeting whereby Clauses 10.20-A & 10.22-A of PTVC Revised Leave Rules, 1984 have been amended, on the basis of which petitioners have been directed vide

impugned office order dated 29.11.2019 to proceed on Leave Preparatory to Retirement (LPR);

- Act of Board of Directors for abolishing the post of Deputy Managing Director;
- Non-maintaining of the seniority list of working Directors;
- Office order of the PTVC, dated 03.06.2020, whereby services of petitioners namely Samina Mir, Uzma Naveed, Humera Nasreen Rana and Qaisar Ahmed Rana as News Caster/Anchor Person/Analyst have been de-notified; and,
- Hiring of head hunting firm i.e. M/s Career Pakistan.

3. Learned counsel for the petitioners contended:

- a) that the very appointment of Arshad Khan as Chairman is in violation of Public Sector Companies (Corporate Governance) Rules, 2013, whereby the Board of PTVC shall have at least one-third of the total number of Directors and five (05) Ex-Officio Director and as such, issuance of notification, dated 03.10.2018, is in violation of the abovementioned law because the Federal Government could not exercise its discretion and pleasure while appointing Director of Public Sector Company as the same has been declared illegal in Atta ul Haq Qasmi case, as such this appointment could be checked under the concept of judicial review and relied upon 2013 SCMR 1159 (Muhammad Ashraf Tiwana v. Pakistan, etc.), PLD 2012 SC 132 (Muhammad Yasin vs. Federation of Pakistan, etc.), 2010 SCMR 1301 (Tariq Aziz ud Din case) and PLD 2020 Islamabad 130 (Saira Rubab Nasir vs. President of Pakistan, etc.);
- b) that Arshad Khan after his resignation as Chairman could not be appointed again as Chairman or recommended by the Federal Government for such position, especially when he had already received pay package of Rs.1,760,000/- and other service benefits, which otherwise disqualifies him under the Companies Act, 2017 as

well as under the Rules of 2013 because Federal Government has directly appointed the Chairman PTVC without adhering to the rule of transparency or competitiveness as also held in 2016 CLD 134 Islamabad (Babar Sattar v. Federation of Pakistan, etc.) and 2019 SCMR 1 (in the matter regarding appointment of Director, PTVC);

- c) that the Public Sector Companies (Corporate Governance) Rules, 2013 provide complete mechanism alongwith criteria for sound management including the composition of Board of Directors and prescribed qualification, whereby a person should be a fit and proper one not hit by disqualification factors referred in the Appendix/Annexure under Rule 3(7) of the Rules, 2013 and he should have no conflict of interest;
- d) that Amir Manzoor (Respondent) cannot hold the public office of Managing Director, PTVC as he has deliberately concealed the material fact of holding dual nationality by his spouse and children, whereas his case for Canadian immigration/nationality is in progress, as such, his appointment has been made without completion of codal formalities i.e. without verification of educational credentials from HEC;
- e) that Rashid Ali Khan (Respondent) has been appointed as Independent Member/Head of Audit Committee, PTVC in violation of judgment passed by the apex Court in the case of Atta-ul-Haq Qasmi as he is not only overage but has conflict of interest being the Chairman of Nayatel, which provides services to the PTVC, even otherwise, his appointment was made in a non-transparent manner as the advertisement so published was tailored made for his selection and the Selection Board was re-constituted by inducting close allies of the Prime Minister;

- f) that Farmanullah Jan (Respondent) has been appointed as Independent Member of Board of Directors, PTVC in violation of the apex Court's judgment passed in the case of Atta-ul-Haq Qasmi as said respondent is overage and is a pensioner, as such, his appointment was made without verification of educational credentials from the HEC;
- g) that Zohair Khaliq (Respondent) has been inducted as new member of Pakistan Broadcasting Corporation (PBC) and PTVC Board despite being overage and associated with telecom industry;
- h) that Muhammad Ali Bukhari, Member Board of Directors, PBC has neither experience of working in any public sector company nor in the media;
- i) that the SECP maintains a data bank of persons eligible to be appointed as Director in the companies, but none of the private Directors in the Board of PTVC/PBC has been selected from such database maintained by the SECP;
- j) that according to the principle of equivalence between the Army Ranks with appointment in Basic Pay Scale, as notified on 07.02.1984, Lt. Col. Hassan Immad Mohamedi (Respondent) was supposed to be inducted against Group-8, but he was directly appointed in Group-9 in violation of said principle;
- k) that amendment in Clauses 10.20-A & 10.22-A of PTVC Revised Leave Rules, 1984 and Office Order changing the terms and conditions of the petitioners' services are unlawful and not tenable in the eyes of law, which otherwise cannot be prospective in nature or applicable to the existing employees;
- l) that petitioners were legitimately expecting to service till their age of superannuation and to receive all the monetary and other benefits,

therefore, such benefits cannot be denied as rights accrued cannot be taken away in an illegal manner based on principle of locus poenitentiae;

- m) that the Board approving the impugned amendment in Clauses 10.20-A & 10.22-A of PTVC Revised Leave Rules, 1984 was not legally constituted, therefore, the decision taken thereof for being illegal in nature is liable to be set-aside and respondents be directed to grant all the rights and benefits accrued to the petitioners;
- n) that petitioners namely Samina Mir, Uzma Naveed, Humera Nasreen Rana and Qaisar Ahmed Rana have been meted out with discrimination as the PTVC while adopting the policy of pick and choose has extended the contract period of other similarly placed employees, as such, impugned office order does not contain any reason for de-notifying the services of said petitioners, which otherwise makes it a non-speaking order, even otherwise, this Court in connected writ petitions has already passed status quo order, dated 06.03.2020, qua all the employees of PTVC, who could potentially be affected by the order of PTVC Board, but even then impugned office order, dated 03.06.2020, has been issued;
- o) that order of this Court, dated 14.10.2019, whereby status quo was maintained, has been violated by the respondents and Hassan Immad Mohamedi has been restrained from performing his official assignments; and,
- p) that CM has been filed by Asad Ahmad Jaspal for withdrawal of earlier CM with permission to file independent writ petition regarding compensatory allowance and inquiry proceedings, though office has raised objection on the said C.M.

4. Conversely, learned counsel for respondents contended that respondent/PTVC is a public limited company and registered under the Companies Ordinance, 1984 (Companies Act, 2017), owned and control by the Federal Government and falls within the definition of public sector company U/S 2(54) of the Companies Act, 2017, whereas its management lies with its Board of Directors in terms of Section 183 of the Companies Act, 2017 read with Article 89 of the Articles of Associations of the Company; that there are three (03) kinds of Director i.e. Executive Director, Non Executive Director and Independent Director, who are recommended or selected in terms of Section 166 of the Companies Act, 2017; that after resignation of Arshad Khan as Chairman, the Board of PTVC unanimously elected him as Acting Managing Director on temporary basis, which he had to hold till appointment of a regular Managing Director, as such, said acting charge was endorsed by the Federal Government vide office order dated 07.11.2018 and matter of extra remuneration to a Director for providing services, in addition to services of Director, had adequately been dealt with by the law in terms of Section 170 of the Companies Act, 2017, which has been paid according to Clause 87 of Articles of Associations as well as in terms of Rule 19 of the Public Sector Companies (Corporate Governance) Rules, 2013, hence there is no violation of law nor there is any ineligibility on the part of Respondent No.5; that decision of the Board of Directors falls within the concept of policy decision, which cannot be interfered with in writ jurisdiction, as such, the relationship between the respondent Corporation and its employees is of master and servant, who are to be governed under the Company rules and same cannot be enforced through the writ jurisdiction in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973; that it has clearly been held by superior Courts of the country that Board of Directors of PTVC is fully competent to amend, alter, modify, supplement or to frame complete new service rules for the employees of PTVC, as such, the rules of PTVC are non-statutory in

nature; that services of petitioners namely Samina Mir, Uzma Naveed, Humera Nasreen Rana and Qaisar Ahmed Rana were de-notified vide impugned office order keeping in view the past performances of petitioners as well as outlook requirements of screen, as such, PTVC is a company incorporated under the provisions of Companies Act, 2017 and has non statutory rules, rendering the relationship between the employer and employee as of Master & Servant.

5. Likewise, learned Additional Attorney General on behalf of Ministry of Information & Broadcasting and the Federation of Pakistan contended that all the statutory requirements have been considered before the recommendation of Arshad Khan/Chairman and as such, no illegality has been committed by the Federal Government in recommending Arshad Khan for the post of Chairman, PTVC.

6. In addition, the learned counsel for SECP (Respondent No.6) contended that PTVC is a public sector company defined in terms of Section 2(54) of the Companies Act, 2017, whereby the Government or any agency of Government has the power to elect, nominate or appoint majority of its Directors, even can recommend for appointment of Chairman or Chief Executive of any public sector company, whereas the role of Chairman is different from that of a Director; that the appointment of Arshad Khan as Acting Managing Director of PTVC has not been reported to the SECP and similarly the Public Sector Companies (Corporate Governance) Rules, 2013 were effective from 08.03.2013 and there was requirement of appointment of Independent Director, which has not been adhered to from the data bank maintained by the SECP, rather the Directors were directly nominated by the Federal Government; that the PTVC has not submitted the compliance report till date, therefore, SECP has not yet confirmed that whether the PTVC has substantially complied with the Rules, 2013, Companies Act, 2017 or otherwise, however it has candidly been stated that PTVC has not complied with Rule 3(1) of the Rules, 2013, even the PTVC has not

intimated regarding order of 07.11.2018 for appointment of Arshad Khan as Acting Managing Director, PTVC.

7. Arguments heard, record perused.

8. Perusal of record reveals that the petitioners have called in question multiple and interlinked issues, therefore, for the sake of brevity, same are to be thrashed out independently.

STATUS OF PAKISTAN TELEVISION CORPORATION (PTVC)

9. The petitioners have heavily relied upon the Public Sector Companies (Corporate Governance) Rules, 2013 (*hereinafter referred to as "Rules, 2013"*) and Companies Act, 2017 with the view that the PTVC being a public sector company falls within the definition of Section 2(g), which is as under:

"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 instrumentality or agency of the Government or a statutory body, or in respect of which the Government or any instrumentality or 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 of the Ordinance."

10. Similarly, it has also been contended that PTVC falls within the definition of public sector company as defined in Section 2(54) of the Companies Act, 2017, which is as under:

"—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, licenced 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."

11. By application of above referred two definitions provided in different laws, there is no cavil to proposition that PTVC is a public sector company falling within the said definitions and same was established under the Companies Ordinance, 1984 (now Companies Act, 2017), owned and controlled by the Federal Government and its management for the purpose of business of companies shall be controlled by the Board in terms of Section 183 of the Companies Act, 2017 read with Article 89 of the Articles of Associations of the Company, which lies with its Board of Directors.

12. In essence, the Rules of 2013 provide the following three kinds of Directors:

- i) **Executive Director**, who is an employee of company in terms of Rule 2(c) of the Rules, 2013;
- ii) **Non-Executive Director**, who is not entrusted with duties of administrative or managerial work in terms of Rule 2(e) of the Rules, 2013; and,
- iii) **Independent Director**, who is neither in service of Pakistan nor financially related to public sector companies concerned, usually nominated and selected amongst the list of Directors maintained by the SECP in their Data Bank in terms of Section 166(b) of the Companies Act, 2017 and Rule 2(b) of the Rules *ibid*.

13. Manifestly, Federal Government has power to appoint Board of Directors in the public sector companies in terms of Rule 4(4) of the Rules, 2013, who has different and distinct responsibility from those of Chief Executive / Managing Director, whereas his role being Chairman of the Board is to ensure that the Board is properly working and all matters relating to governance of public sector companies is based on agenda of the meeting. The Chairman is also responsible for implementation of strategies and policies approved by the Board, making appropriate arrangement to ensure funds and the resources are properly

safeguarded and used economically, efficiently and effectively in accordance with all statutory obligations.

APPOINTMENT OF ARSHAD KHAN AS CHAIRMAN, PTVC

14. The appointment of Ashraf Khan being Chairman of Board of Directors, PTVC has been challenged on the ground that he was initially appointed through notification dated 03.10.2018 by the Ministry of Information & Broadcasting (hereinafter referred to as "*MoIB*") in terms of powers under Section 165-B of the Companies Act, 2017 with direction to the newly constituted Board "*to elect Mr. Ashraf Khan, Chairman PTVC in the line with the Pakistan Television Corporation Memorandum and Articles of Associations (Article 95)*", however he resigned from his position as Chairman of Board of Directors, PTVC on 06.11.2018 to be appointed as Acting Managing Director of PTVC, whereafter office order 07.11.2018 was issued by the MoIB. However, on 14.06.2019, the Federal Government directed the Board of Directors to appoint Arshad Khan as Chairman of the PTVC Board in line with the PTVC's Memorandum and Articles of Associations.

15. Likewise, W.P. No.778/2019 was earlier filed assailing the appointment of Arshad Khan being Acting Managing Director of the PTVC along with his appointment as Director of the Board, vide notification dated 03.10.2018. The said writ petition was adjudicated upon and decided through consolidated judgment dated 07.05.2019, passed in W.P. No.367/2018 (Malik Shabbir Ahmad vs. Federation of Pakistan) in which a prayer was made for appointment of Managing Director of PTVC in accordance with law. Both the said petitions were allowed mainly on the ground that Federal Government was in process of recruitment against the post of Managing Director, PTVC, but due to diverse issues at their end, the appointment could not be finalized. However, the appointment of Arshad Khan being Acting Managing Director of PTVC was withdrawn w.e.f. 11.04.2019 by MoIB, therefore, Federal Government was directed to appoint Managing

Director, PTVC in accordance with law within the period of three (03) months. As such, the principle of *res judicata* is not applicable in this case as all other issues were not discussed, adjudicated upon or decided, neither any observation was made regarding other issues except a direction for appointment of Managing Director of PTVC to the Federal Government was issued, even otherwise, in connected writ petitions the appointments have been assailed independently including the appointment of Arshad Khan being Chairman of PTVC on some new grounds not earlier available, even the complete record was not produced before this Court in previous round of proceedings, therefore, the ground of application of *res judicata* is not available in strict sense in this case.

16. In this round, the appointment of Arshad Khan has again been challenged on the basis of notification earlier considered by this Court in previous proceedings mentioned above, whereby the petitioner has prayed that Arshad Khan has been appointed in violation of law and as per annexure of the Rules of 2013 with the contention that he is not "*fit and proper person*" for the purpose of appointment as no transparency has been adopted by the Federal Government while appointing Arshad Khan as Chairman, PTVC, even the criteria laid down in 2019 SCMR 1 (in the matter regarding appointment of Director, PTVC), has not been adhered to.

17. The concept of "*fit and proper person*" in terms of Rule 3(7) of the Rules, 2013 is defined in the following manner:

"The appointing authorities, including the Government and other shareholders, shall apply the fit and proper criteria given in the annexure in making nominations of the person for election as Board Members under the provisions of the Ordinance."

18. Whereby, the term "*Ordinance*" means the Companies Ordinance, 1984 (now the Companies Act, 2017). The annexure under the said Rules, 2013 defined the criteria of determining fit and proper person, which is as under:

(1) For the purpose of determining as to whether a person proposed to be appointed as director is a 'fit and proper person', the appointing authorities shall take into account any consideration as it deems fit, including but not limited to the following criteria, namely:- The person proposed for the said position –

- (a) is at least graduate;*
- (b) is a reputed businessman or a recognised professional with relevant sectoral experience;*
- (c) has financial integrity;*
- (d) has no convictions or civil liabilities;*
- (e) is known to have competence;*
- (f) has good reputation and character;*
- (g) has the traits of efficiency and honesty;*
- (h) does not suffer from any disqualification to act as a director stipulated in the Ordinance;*
- (i) has not been subject to an order passed by the Commission cancelling the certificate of registration granted to the person individually or collectively with others on the ground of its indulging in insider trading, fraudulent and unfair trade practices or market manipulation, illegal banking, forex or deposit taking business;*
- (j) has not been subject to an order passed by the Commission or any other regulatory authority, withdrawing or refusing to grant any license or approval to him which has a bearing on the capital market;*
- (k) is not a stock broker or agent of a broker; and*
- (l) does not suffer from a conflict of interest; this includes political office holders whether or not in a legislative role.*

(2) A director shall cease to be considered as a "fit and proper person" for the purpose, if he incurs any of the following disqualifications, namely:-

- (a) he is convicted by a court for any offence involving moral turpitude, economic offence, disregard of securities and company laws or fraud;*
- (b) an order for winding up has been passed against a company of which he was the officer as defined under section 305 of the Ordinance;*
- (c) he or his close relatives have been engaged in a business which is of the same nature as and directly competes with the business carried on by the Public Sector Company of which he is the director;***
- (d) he does not conduct his duties with due diligence and skill; or*
- (e) his association with the Public Sector Company is likely, for whatever reason, to be detrimental to the interest of the Public Sector Company, or be otherwise undesirable.*

19. Keeping in view the above criteria, the following factual aspects have been raised and noted from record, which deals with appointment of Arshad Khan as Chairman, PTVC:

S.No.	Dates	Particular
1.	03.10.2018	Arshad Khan was appointed as Director, PTVC by the Federal Government in terms of Section 165B of the Companies Act, 2017 to be appointed as Chairman of the Company.
2.	08.10.2018	217 th Meeting of Board of Directors, whereby nomination of Arshad Khan for appointment as Chairman was approved for period of three years in terms of Clause 95 of the Articles of Associations of PTVC and share of Rs.100 was also transferred in his name.
3.	05.11.2018	Arshad Khan had resigned from his position as Chairman of PTVC Board.
4.	06.11.2018	219 th Meeting of PTVC Board, whereby Arshad Khan was unanimously appointed as Acting Managing Director of PTVC against pay package/salary of Rs.1,760,000 (net of taxes) along with chauffeur driven 1800CC car for personal/private use and other service benefits. The Board confirmed the proposed appointment and transferred share of Rs.100 in favour of Arshad Khan.
5.	07.11.2018	Office order issued by the MoIB notifying the appointment of Arshad Khan as Acting Managing Director of PTVC.
6.	11.04.2019	The acting charge of Arshad Khan as Managing Director, PTVC, dated 07.11.2018, was withdrawn by MoIB.
7.	14.06.2019	Office Memorandum issued by the MoIB, whereby Federal Government was pleased to nominate Arshad Khan as Chairman, Board of Directors, PTVC. Board is also directed to elect Arshad Khan as Chairman, PTVC in

		terms of Article 95 of the Articles of Associations.
8.	17.06.2019	226 th Meeting of Board of Directors, whereby Arshad Khan has been unanimously elected/appointed as Chairman, PTVC for three years and approved transfer of one share of Rs.100 in his favour.

20. The abovementioned resume of facts is admitted by all the parties, therefore, the only question left for determination by this Court is as to whether any person, who has received a pay/salary with other benefits from PTVC, can be appointed as a Director in terms of Independent Director, or Non Executive Director by the Federal Government in terms of the restriction imposed in the Rules, 2013 as well as in the Companies Act, 2017 or under the criteria of fit and proper person, to be appointed as the Chairman of the Board of Directors, PTVC?

21. The petitioners brought attention of this Court towards Sections 164, 165 & 166 of the Companies Act, 2017, which deal with the appointment and nomination of different kinds of Directors, whereas it has not been denied by the MoIB that Arshad Khan has been nominated as Director to be appointed as Chairman, PTVC after his resignation in the first round on 14.06.2019, whereas his initial recommendation by the Federal Government, dated 03.10.2018, reflects that he has been recommended by the Federal Government in terms of Section 165(b) of the Companies Act, 2017, whereby the Federal Government can nominate any person as Director on its behalf and as such, the recommendation by the Federal Government falls under the concept of internal affair of the Government, whom they can select by their choice or through their own internal cabinet decision, which could not be interfered with while exercising constitutional jurisdiction. However, the only disqualification associated to Arshad Khan is the period when he has been appointed as Acting Managing Director in 219th Meeting of Board of Directors, dated 06.11.2018, which has

further been approved by the Federal Government through letter dated 07.11.2018 against huge financial package for the period of 05 months.

22. The Federal Government argued that Arshad Khan was a Non Executive Director and as such, there is no restriction upon him in terms of Section 166 of the Companies Act, 2017, although he can receive salaries together with other benefits and he can be appointed as Director of the Company. For the purpose of clarity, Section 166 of the Companies Act, 2017 is reproduced as under:

166. Manner of selection of independent directors and maintenance of databank of independent directors. – (1) *An independent director to be appointed under any law, rules, regulations or code, shall be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any institute, body or association, as may be notified by the Commission, having expertise in creation and maintenance of such data bank and post on their website for the use by the company making the appointment of such directors:*

Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company or the Government, as the case may be, making such appointment.

(2) *For the purpose of this section, an independent director means a director who is not connected or does not have any other relationship, whether pecuniary or otherwise, with the company, its associated companies, subsidiaries, holding company or directors; and he can be reasonably perceived as being able to exercise independent business judgment without being subservient to any form of conflict of interest:*

Provided that without prejudice to the generality of this subsection no director shall be considered independent if one or more of the following circumstances exist –

- (a) ***he has been an employee of the company, any of its subsidiaries or holding company within the last three years;***
- (b) *he is or has been the chief executive officer of subsidiaries, associated company, associated undertaking or holding company in the last three years;*
- (c) *he has, or has had within the last three years, a material business relationship with the company either directly, or*

indirectly as a partner, major shareholder or director of a body that has such a relationship with the company.

Explanation: *The major shareholder means a person who, individually or in concert with his family or as part of a group, holds 10% or more shares having voting rights in the paid-up capital of the company;*

- (d) *he has received remuneration in the three years preceding his/her appointment as a director or receives additional remuneration, excluding retirement benefits from the company apart from a director's fee or has participated in the company's stock option or a performance-related pay scheme;*
- (e) *he is a close relative of the company's promoters, directors or major shareholders:*

Explanation: *—close relative¹ means spouse(s), lineal ascendants and descendants and siblings;*

- (f) *he holds cross-directorships or has significant links with other directors through involvement in other companies or bodies not being the associations licenced under section 42;*
- (g) *he has served on the board for more than three consecutive terms from the date of his first appointment, and for more than two consecutive terms in case of a public sector company, provided that such person shall be deemed —independent director¹ after a lapse of one term;*
- (h) *a person nominated as a director under sections 164 and 165:*

*Provided further that for determining the independence of directors for the purpose of sub-clauses (a), (b) and (c) in respect of public sector companies, the time period shall be taken as **two years** instead of three years. Further, an independent director in case of a public sector company shall not be in the service of Pakistan or of any statutory body or anybody or institution owned or controlled by the Government.*

- (3) *The independent director of a listed company shall be elected in the same manner as other directors are elected in terms of section 159 and the statement of material facts annexed to the notice of the general meeting called for the purpose shall indicate the justification for choosing the appointee for appointment as independent director.*

(4) *No individual shall be selected for the data bank referred to in sub-section (1) without his consent in writing.*

(5) *The manner and procedure of selection of independent directors on the databank who fulfill the qualifications and other requirements shall be specified by the Commission.*

(6) *The requirements of sub-section (1) –*

(a) *shall be deemed relaxed till such time a notification is issued by the Commission; and*

(b) *may be relaxed by the Commission on an application made by the company supported with the sufficient justification or the practical difficulty, as the case may be.*

23. Evidently, Arshad Khan being Acting Managing Director of PTVC had received salary and other benefits, as such, he could not be appointed as Director in violation of Section 166(2)(a)(d) & (h) of the Companies Act, 2017, especially when Arshad Khan had not taken a break for two years after his resignation, even otherwise, while receiving salary as acting Managing Director he has created an interest in the PTVC, which prohibits the Government not to appoint Arshad Khan on any position in PTVC.

24. While considering the judgment reported as **2019 SCMR 1 (in the matter regarding appointment of Director, PTVC)**, it is not the case of petitioners that Arshad Khan was appointed without the resolution passed in the meeting of Board of Directors, PTVC or in violation of Article 95 of the Articles of Associations of PTVC, which reads as under:

95. *The Board of Directors shall elect a Chairman of the Company from amongst the Directors representing Government of Pakistan to preside over their meeting, and determine the period for which is to hold office. The office of the Chairman shall be filled up on any vacancy by the Directors in accordance with the directives received by them from the Government of Pakistan and subject to the provision of the Ordinance."*

25. Besides the above referred position, the matter falls within the domain of the Federal Government as to how they came to know about the credentials of Arshad Khan before their nomination in terms of Rules of Business, 1973,

although there is no denial that Federal Government has power to nominate Director of the Board of PTVC and even can issue direction to Board to elect a Chairman, PTVC. The relevant rules describe the discretion but the same have to be exercised in a reasonable manner as held in PLD 2015 SC 6 (Ghulam Rasool vs. Federation of Pakistan).

26. The petitioners have vehemently argued that Arshad Khan as well as other Directors nominated by the Federal Government have not been selected through any public advertisement as required in the case reported as 2019 SCMR 1 nor from the data bank maintained by the SECP in terms of Section 166 of the Companies Act, 2017, hence the initial onus has been shifted upon the respondents/Federal Government to demonstrate that the discretionary power exercised by the Federal Government before the nomination of Arshad Khan or any other Director has been considered through a structured concept, if so, the evidence to that extent has to be brought on record, otherwise it shall be considered that all the Directors who have been nominated by the Federal Government are nominated through an arbitrary manner on the whims and caprice of the Federal Government. In this regard, the petitioners have relied upon 2016 CLD 134 Islamabad (Babar Sattar v. Federation of Pakistan, etc.), whereby the Federal Government and the State functionaries are under obligation to observe highest standard of probity, transparency and process of careful scrutiny. The duty imposed on the Federal Government is, therefore, of a nature which falls within realm of fiduciary duty, requiring the Federal Government to adopt due process of scrutiny, mechanism and to identify the most suitable candidates on the touchstone of "fit and proper person". On the contrary the entire exercise is considered to be arbitrary. The Rules of 2013 have to be read with provision of Section 183 of the Companies Act, 2017, whereby the Board has power to deal with its business in terms of the Articles and power conferred under the general meeting. It is settled by now that if law prescribes

doing of a certain thing in a particular manner then it has to be done in that manner alone. Reliance is placed upon PLD 2013 SC 255 (Muhammad Anwar v. Mst. Ilyas Begum).

27. The name of the Independent Director has to be selected from the Data Bank maintained by the SECP, whereby same is to be advertised along with its qualification, which must be with regard to fit and proper criteria referred in the Rules. In terms of Section 166 of the Companies Act, 2017 the Independent Director appointed under any law, rules, regulations or code, shall be selected from the Data Bank containing names, addresses and qualification of persons eligible and willing to work as Independent Director, maintained by any institute, or body of Corporation, as may be notified by the commission, having expertise in creation and maintenance of such Data Bank, thereafter the names of those Directors have to be posted on their official website for the use by the company making appointment of such directors. However, learned counsel for the Federal Government as well as PTVC have been confronted regarding the status of Arshad Khan and other Directors as to whether they have been selected from the Data Bank maintained by the SECP, whereby it has been candidly conceded that all the Directors were directly nominated by the Federal Government and not selected from the data bank of SECP. Hence, it is a straightforward violation of the Companies Act, 2017, which is not curable. Although, the Federal Government has power to nominate Director with certain restriction which is one-third of the members of Independent Directors. However, I have confronted the representatives of the Federal Government to enlist those Directors who will be considered as Independent Directors, whereby the Secretary, MoIB has submitted a concise statement that all the Directors are Non-Executive Directors and none of them is Independent Director in terms of law. Hence, there is no cavil to proposition that concept of Independent Director has been compromised and in other words the independence intended to be

given to a public sector company has been undermined, whereby the interest of general public who are actual custodian of the wealth of Pakistan has been suppressed by the persons who are running affairs of the Federal Government, hence such aspect would be considered as a Government capture in the company affairs.

28. I have gone through the structure of the public sector companies referred in Companies Act, 2017 as well as in the Rules of 2013 and observed that the legislative intent is to ensure the managerial/administrative independence of such Corporation so that they operate through their Board and not by direct intervention of the Federal Government. The concept of managerial independence has been inculcated in the Rules, 2013, which reflects that the majority of Director of the Board are to be independent Directors to maintain the balance amongst the nominee Directors of the Federal Government, who are working on the instructions or will of the Federal Government, whereas Independent Directors have their own views through which the balance has to be maintained amongst the Board for their future business decisions to run the Corporation/public sector companies in best of their ability. However, the Federal Government through the subsequent amendment made in the Rules of 2013, vide SRO No.275(i)/2017, dated 21.04.2017, left only one-third of the members being Independent Directors. This shifted the control of Board in the hands of Government as they could directly nominate majority of the Board and effectively the Chairman of PTVCL. Similarly, another amendment in the Companies Act, 2017, dated 30.04.2020, allows the Federal Government to appoint all Directors of the Board on its discretion and such nominated Directors may also be considered Independent Directors. This amendment has changed the entire concept of the Rules, 2013, as a result whereof, the spirit of the Rules has become redundant.

29. I have also gone through the summary prepared by the MoIB regarding re-constitution of the Board of Directors and as to whether the same has fulfilled the test laid down in cases of *Tariq Aziz ud Din* and *Mustafa Impex*, which contains a legal opinion of legal advisors of PTVC i.e. Mr. Muhammad Nazir Jawwad and Mr. Shahid Mehmood Khokhar, Advocates regarding appointment of Rashid Ali Khan as Member, Farman Ullah Jan as Member and Arshad Khan as Chairman, PTVC, whereby the following objections have been referred by said legal advisors:

10. *Upon perusal of the PTV BODs composition, it has been revealed that in addition to the ineligible/resigned a further **THREE Member/Directors of the PTV BOD have pecuniary interest as well as conflict of interest in the affairs of the PTV.** Observation/reasons of ineligibility are appended below:*

MR. RASHID ALI KHAN

As per his CV, he is Director of the following companies

- i) *Chairman/Director of Nayatel Ltd. from 2004 till date*
- ii) *Chairman/Director of Micronet Ltd. from 2004 till date.*
- iii) *Director of Pakistan Engineering Company Lahore from 2012 till date.*
- iv) *Member Board of Directors, NRSP Microfinance Bank Ltd., Islamabad from 2014 till date*
- v) *Director Bank of Khyber Ltd. Peshawar from 2015 till date*
- vi) *Director, Hayatabad Medical Complex, Peshawar from 2015 till date*
- vii) *Director Elementary Education Foundation, Peshawar from 2015 till date*
- viii) *Director of NAMAL University, Mianwali from 2004 till date*
- ix) *Director of SUKHCHAIN Real Estate Development, Lahore from 2004 till date*

*Under the relevant provision of law, a person cannot be nominated/appointed as Director of more than five companies – WHEREAS Mr. Rashid Ali Khan is sitting Directors of more than 9 (Nine) Companies. Therefore, his nominated/appointment as Director of PTV BOD is in violation of settled law. **Relevant Rule – 3 (4) of the “Public Sector Companies (Corporate Governance) Rules, 2013** is reproduced as under:*

“(4) No person shall be elected or nominated as a Director of more than five Public Sector Companies and listed companies simultaneously, except their subsidiaries”.

Moreover M/s Nayatell Ltd. is in Business with the PTV since long and Mr. Rashid Ali Khan is Chairman/Director of M/s Nayatell Ltd. and the said Company is service provider to the PTV and receiving monthly subscription from PTV in the said account. Relevant Rule 2 (ii) of **Public Sector Companies (Corporate Governance) Rules, 2013** is reproduced as under:

“He has, or has had within the last two years, material business relationship with the Public Sector Company either directly or indirectly, or Director of a body that has such a relationship with the Public Sector Company”.

MR. FARMAN ULLAH JAN

Mr. Farman Ullah Jan is former General Manager, PTV – a **Group-9 retired officer of PTV**. He is still receiving **Pension as well as Medical facilities from the PTV**. Under the relevant provision of **“The Companies Act, 2017”** he cannot be treated as an Independent Director. **Section – 166(2)(d) of the “The Companies Act, 2017”** is reproduced as under:

“he has received remuneration in the three years preceding his/her appointment as a Director or receives additional remuneration, excluding retirement benefits from the company apart from a Director’s fee or has participated in the company’s stock option or a performance-related pay scheme.”

Board of Directors of PTVC has all powers including rule making body in respect of employees of PTV. Pension rules as well as medical facilities related affairs are always remain under discussion in the BOD, therefore, Mr. Farman Ullah Jan has pecuniary interest in the affairs of PTV and he cannot be nominated/appointed as Member/Director of PTV BOD.

MR. ARSHAD KHAN

“Mr. Arshad Khan was nominated/appointed as Director of PTV BOD from Private Sector. Extract from Notification No.10(23)/2017-TV dated 3rd October, 2018 wherein new Directors of BOD were nominated is reproduced as under:

“The Board of Directors is directed to elect Mr. Arshad Khan as Chairman, PTV in line with the Pakistan Television Corporation’s Memorandum & Article of Association (Article 95). The Chairman shall unless he resigns earlier, hold office for a period of 3 years”.

Mr. Arshad Khan was elected as Chairman by the BOD of PTV but he resigned from the **position of Chairman, PTV and was detailed by the BODs as Managing Director against a salary package of Rs.17,60,000/- net of taxes**. As Managing Director of PTV he has created pecuniary interest in the affairs of PTV, therefore, **he does not fall in the definition of Independent Director**. Relevant provision of

Public Sector Companies (Corporate Governance) Rules, 2013, Rule-2 Definition clause (d) in respect of "Independent Director" is reproduced as under:

"(d) "INDEPENDENT DIRECTOR" means a Non-Executive Director who is not in the service of Pakistan or of any statutory body or anybody or institution owned or controlled by the Government and who is not connected or **does not have any other relationship**, whether pecuniary or otherwise, with the Public Sector Company, its associated companies, subsidiaries, holding company or Directors. The test of independence principally emanates from the fact whether such person can be reasonably perceived as being able to exercise independent judgment without being subservient to any form of conflict of interest."

"(e) NON-EXECUTIVE DIRECTOR: means a Director of a Public Sector Company **who is not entrusted with responsibilities of an administrative or managerial nature"**.

Mr. Arshad Khan was initially appointed as Director and later on elected as Chairman, PTV which is a honorary position and as per Memorandum & Article of Association of PTV, Chairman is not entitled to draw any remuneration from PTV. Being Managing Director of PTV, Mr. Arshad Khan has received salary and other benefits from PTV, therefore, he does not fall in the definition of Independent Director or Non-Executive Director. In view of the above, **he cannot be appointed as a board member for a period of 3 years.**

That in its judgment dated **07-05-2019**, the honorable Islamabad High Court has not only reproduced the **prayer clauses of both the above said petitions** but also has **allowed the same**. Hence, we are of the considered opinion that for all intents and purposes the Board of Directors notified vide Notification dated **03rd October, 2018** has ceased to exist as the **W.P. 887/2019 (Prayer Clause 2)** against the constitution and nominated of **BoDs is allowed**.

In the circumstances and keeping in view the above stated rule position, there should be only "one-third" Members/Directors from Private Sector in the BOD of PTV. It is further advised that the matter may be referred to the Federal Government for re-constitution of the Board of Directors of PTV as well as appointment of Managing Director PTVC in accordance with relevant provisions of "Public Sector Companies (Corporate Governance) Rules, 2013" and "Companies Act, 2017" as per Court Order to avoid any untoward situation in future."

30. The above referred legal opinion clearly establishes the consciousness, sensitivity and higher moral standards of the legal advisors, who have

manifestly advised the PTVC not to appoint Arshad Khan, Rashid Ali Khan and Farmanullah Jan, but surprisingly the Secretary, MoIB has overlooked such important opinion and processed the case of appointment of Board of Directors through summary for the Cabinet, even in the Meeting of the Cabinet the legal opinion or objections have not been discussed, rather information has been withheld. In terms of Rules of Business, 1973, it is the role of the Secretary concerned to assist the Federal Cabinet before finalization of any policy matter within the four corners of law. There is no cavil to proposition that only one third of Directors could be appointed as Independent Directors though the said appointments should have been made from data bank maintained by the SECP, but no such exercise was carried out in terms of Section 166 of the Companies Act, 2017 nor the true intent of Independent Director has been achieved, rather the Rules of 2013, Companies Act, 2017 and Articles of Association of PTVC have been violated in blatant manner.

31. In view of the above position, it has been observed that Rashid Ali Khan/Director is admittedly having its business with PTVC through M/s Nayatel Ltd. and even this fact has been acknowledged by MoIB in their para-wise comments in Para-E(iv), whereby it has been referred as, *"correct to that extent that he is service provider to PTV and SRBC as well as he is about 70 years of age."* But surprisingly, this element was not highlighted to the Federal Cabinet, rather these facts have been concealed which itself is the responsibility of the Secretary concerned to appraise the Federal Government in this regard, therefore, conflict of interest is apparent in this case in terms of Rule 2(d)(i)(iii) read with Rule 2(e) of the Rules, 2013 as M/s Nayatel (Pvt.) Ltd. is in service agreement with PTVC and earning Rs.30/40 million annually, therefore, it is also a violation of Rule 18 of the Rules, 2013. Although, the concept of conflict of interest has elaborately been discussed in Rule 5 of the Rules, 2013, but objectively the said concept does not exclude the situation in hand, rather it is a

continuous conflict of interest reflected on record which could not be avoided in any manner, as person receiving financial benefits from public sector company through his other company having its share holding, this aspect could not be segregated in any manner as it could potentially get compromised the interest of public sector company, *per se*, such person is a potential threat to PTVC and it might harm the future business prospects of PTVC.

32. Farman Ullah Jan is a retired officer of Group-9 in the PTVC, receiving pension as well as medical facility, hence his case clearly falls within the purview of Section 166(2)(d) of the Companies Act, 2017, who has pecuniary interest in the affairs of PTVC, therefore, his disqualification is apparent.

33. Arshad Khan/Chairman has been receiving salary package from PTVC being Acting Managing Director, and lost his character of Independent Director in terms of Rule 2(d) of the Rules, 2013, hence he could not be assigned with any responsibility.

34. Another important aspect which has time and again been argued is the upper age limit of the Directors, as such, it has not been denied by MoIB that Rashid Ali Khan, Farman Ullah Jan and Zohair Khaliq are more than 65 years of age, and in this regard no waiver/relaxation in upper age limit was ever granted by the Federal Government. In similar situation, the apex Court in reported case 2019 SCMR 1 has dealt with the illegal appointment of Atta-ul-Haq Qasmi as Chairman PTVC, whereby a special exemption from upper age limit of 65 years for the appointment of head of autonomous bodies under the MoIB was referred that, "*no justification was provided for relaxation of upper age limit.*" This aspect clearly establishes that a relaxation in upper age limit is mandatory as per Atta ul Haq Qasmi case supra, hence, the very appointments of all those Directors, who are more than 65 years of age without grant of relaxation by the Federal Government, are illegal.

35. The concept of Independent Director has to be seen with reference to their appointment from the Data Bank maintained by the SECP, if not, then the principle of best of the best for a transparent procedure of appointment should have been considered in line with Serial No.141 of the ESTACODE, which entails publishing an advertisement to gauge the talent pool available for such post, filtering and then assessing the best candidate for the post in accordance with criteria laid down in the Rules, 2013. Hence, the very appointments of all the Directors, PTVC discussed above are ILLEGAL.

STATUS OF THE BOARD OF DIRECTORS

36. I have also gone through the judgment heavily relied upon by the petitioner side i.e. 2019 SCMR 1 (in the matter of HRC No.3654/2018), whereby the very appointment of Ata-ul-Haq Qasmi was assailed while considering the criteria and the mode and manner adopted by the respondents for appointment of the then Managing Director, which was declared by the apex Court as illegal on multiple grounds. It has also been referred in Para-11 of said judgment that the then Managing Director was appointed in violation of fit and proper criteria referred in the Rules, 2013 as well as in violation of procedure laid down at Serial No.141 of the ESTA Code, which was not followed. Resultantly, the factors of transparency, merit and fairness in the appointment of public functionaries, as required by the law, were not followed. Hence, the appointments of Members of Board of Directors (non-executive) are declared ILLEGAL, except ex-officio member of Board.

RECOVERY OF SALARIES, PERKS AND PRIVILEGES RECEIVED BY MEMBERS OF THE BOARD OF DIRECTORS

37. I have also considered the ratio settled in 2019 SCMR 1, whereby the apex Court has declared the remuneration/salary and other perks and privilege of Ata-ul-Haq Qasmi, the then Chairman PTVC, as illegal and directed to recover the amount in the ratio settled in Para-35 of the said reported judgment. While going through the judgment, the underline principle observed by the apex Court

regarding the appointment of Ata-ul-Haq Qasmi is the Board Resolution, which has been discussed in para-18 of the said judgment in the following manner:

“The argument of his learned counsel that Mr. Qasmi was acting as de facto MD and was performing extra services does not save him because as mentioned above, as per Article 87 of the AoA, if any Director is appointed to the office of Chairman or devotes special attention to the business of the Company or otherwise is performing extra services, a determination is to be made by the Board as to whether such special attention or extra services are outside the scope of the ordinary duties of a Director after which the Board may decide to pay the Director such extra remuneration in the form of salary, fees, allowances, etc. There is no Board resolution on record to suggest that the Directors of PTV made any such determination with respect to Mr. Qasmi.”

38. Keeping in view the above position the judgment of the apex Court is not applicable to the extent of salary packages of present Managing Director and other officials, who have been appointed after due process as their salaries have been validly discussed in the Board of Directors Meetings and given effect through a unanimous decision, even otherwise, the decisions made by the Board of Directors have been given protection in terms of Section 168 of the Companies Act, 2017.

39. The apex Court has also highlighted the hefty salary packages on the ground that Rule 17(3) of the Rules, 2013 laid down certain principle to deal with the executive remuneration on the basis of remuneration policy of the public sector company. It has also been observed in said judgment that despite the fact that PTVC has suffered colossal losses during the past 7 years, Mr. Qasmi was awarded with generous salary and exorbitant perks and privilege. This raises serious concern as to whether the “remuneration policy of the Chairman is in line with best practices” The details of salary packages and other benefits have been given in Para-19, 20 & 21, whereas Article 87 of the Articles of Association permits the board to determine the remuneration for any extra services performed by the Director including holding of office of Chairman we do not think that board can sanction excessive remuneration by way of various benefits/allowance while keeping in mind the spirit of rules, 2013. These

principles settled in the case of *Atta-ul-Haq Qasmi supra* disclose another important aspect, which has not been catered by the Board of Directors, PTVC while appointing different officials on heavy packages, including Rashid Ali Khan as Managing Director for a short period, which is apparently on exorbitant side. Hence, it is high time to settle such kind of illegalities in public sector companies committed by the Board of Directors to give benefit to blue eyed persons against the public interest, therefore, the Federal Government is directed to draft a policy or law through some legislation to deal with the issue of salary/remuneration and other fringe benefits to such kind of officers / directors or employees of the public sector companies.

APPOINTMENT OF AMIR MANZOOR AS MANAGING DIRECTOR

40. Amir Manzoor was appointed as Managing Director, vide notification dated 14.06.2019, by the MoIB in terms of Office Memorandum of Establishment Division, dated 28.03.2019, which "*deals with selection procedure of chief executive in key public sector enterprises*", whereby a Selection Committee was constituted, headed by Minister Incharge Administrative Division under the Rules of 2013 being Chairman, Secretary of Administrative Division, three (03) experts having knowledge of relevant field along with Non-Executive Chairman of Board of Directors or senior members. In line with said O.M., an advertisement, dated 01.02.2019, was earlier published in daily Dawn by the MoIB for the post of Managing Director, PTVC, against which the Ministry had received 41 applications. The Selection Committee in its meeting, dated 12.04.2019, shortlisted 12 candidates for said post, however said Committee was dissolved, whereafter fresh summary was moved for constitution of Selection Committee and Prime Minister of Pakistan approved Ishrat Hussain, Advisor for Institutional Reforms and Austerity of Pakistan, as Chairman of the Selection Committee, who reviewed the applications of 41 candidates. The Selection Committee also interviewed the shortlisted candidates on 20.05.2019 and

recommended three (03) candidates i.e. (i) Amir Manzoor, (ii) Jamal Akhtar and (iii) Yasin Joya, whereafter the matter was submitted before the Prime Minister. The Cabinet in its meeting, dated 13.06.2019, approved the appointment of Managing Director with the result of issuance of notification, dated 14.06.2019, by the MoIB notifying the appointment of Amir Manzoor as Managing Director, PTVC, followed by its approval by the Board of Directors, PTVC in its 226th Meeting, dated 21.06.2019.

41. While considering the above referred appointment process the substantial compliance has been made on the direction of the apex Court referred in 2019 SCMR 1 (in the matter regarding appointment of Managing Director PTVC), wherein the apex Court has laid down certain parameters for consideration of the Selection Committee, Board of Directors as well as by the Government of Pakistan regarding appointment on the key positions, including the post of Managing Director, which has been discussed in Para-11 of the said reported judgment, which is as under:

"11. In light of the above, we find that while the Federal Government was empowered under Section 183(b) of the Ordinance read with Article 83 of the AoA to appoint a Director to the Board of PTV, it had to do so by following the procedure prescribed in Clause (iii) of Sl. No.141 of the Esta Code, keeping in mind the criteria laid down in Rules 3(1) and (7) and the Annexure ('fit and proper' person) to the Rules of 2013. Furthermore, the procedure laid down in Sl. No.140 of the Esta Code had to be followed. Such a process additionally ensured transparency, merit and fairness in the appointment of public functionaries as required by the law laid down by this Court. We consider that disregard of the aforementioned procedure by the Federal Government in the instant case was meant to benefit a predetermined candidate, Mr. Qasmi. His appointment as a Director of PTV was made in violation of the prescribed legal criteria and procedure. It is hereby declared to be illegal."

42. While considering the above position, it has been observed that the advertisement was published for the post of Managing Director, against which different applications were received by the Selection Committee and after conducting interviews by the Committee, three (03) nominees were

recommended to the Federal Government for appointment, whereafter Amir Manzoor has been appointed as Managing Director, PTVC keeping in view his eligibility, experience and expertise, as such, the learned counsel for petitioners has not highlighted any defect, disqualification or ineligibility in the appointment of Amir Manzoor, Managing Director, PTVC, even the Board of Directors, PTVC has approved the appointment in their 226th Meeting.

43. Amir Manzoor has also been considered in the light of criteria laid down in Rules 3(1) and (7) read with annexure (fit and proper person) of the Rules of 2013. By scanning said criteria there is nothing available on record to assume that the appointment of Managing Director has been made in violation of criteria referred in the annexure in terms of Rule 3(7) of the *Public Sectors Companies (Corporate Governance) Rules, 2013*. In such type of writ petition, where appointments have been assailed, the initial onus is upon the person agitating the matter to highlight those ineligibilities, disqualification or factors not observed or adhered to by the appointing authorities, however when said factors have not been highlighted, the Court has to go through the relevant provisions of law as well as summaries after seeking report from the Government and the incumbent to justify his appointment whether the criteria for determining a fit and proper person has been observed in letter and spirit or otherwise, as such, the disqualification referred in this criteria has thoroughly been scanned, but nothing adverse to appointment of Amir Manzoor, Managing Director, PTVC has been observed at this stage, **therefore, his appointment is within the four corners of law and declared as such.**

APPOINTMENT OF MS. QUTRINA HOSSAIN, CHIEF NEWS & CURRENT AFFAIRS

44. The appointment of Ms. Qutrina Hossain has been assailed for having been made through a head hunting firm namely M/s Career Pakistan, which was hired by the Board of Directors of PTVC through non-transparent and in

clandestine manner i.e. without any advertisement and/or codal formalities, even it has been alleged that Qutrina Hossain is a non-matric, whereas the prescribed qualification of news editor, reporter, researcher is graduation as per PTVC Service Rules.

45. On the other hand, learned counsel for PTVC contented that Qutrina Hossain worked on different editorial post in daily "The News" and daily "Dawn" in 1980s and 1990s. She has also been Chief Reporter of Khaleej Times and worked as consultant of PTVC, even she worked as Director Current Affairs in Express News from 2006 to 2012. She has done O-Level and A-Level followed by graduation from Mount Holyoake College (USA) i.e. a chartered awarding degree institute, which is recognized institute by Higher Education Commission (HEC) as reflected from letter dated 16.01.2020, issued in reply to the Controller Administration & Personnel, PTVC. The Board of Directors, PTVC in 218th meeting, dated 22.10.2018, decided to hire Chief News/Current Affairs, whereby a job description was provided to M/s Career Pakistan for provision of CVs of best talent in Pakistan, whereafter the said firm has provided 10 candidates, as a result whereof, HR Committee conducted interviews and recommended Qutrina Hossain for said position, whereafter Board of Directors PTVC in its 233rd meeting held on 21.01.2020 approved the appointment of Qutrina Hossain.

46. In view of above position, this Court is not equipped with the role to scrutinize the educational qualification vis-a-vis the working experience provided in job description for the post of Chief News/Current Affairs, which in fact, is the role of the head hunting firm as well as HR Committee of the PTVC, however if any such requirements were not meted out or checked by the department, they were held liable for their illegalities, *hence at this point of time the appointment of Qutrina Hossain is declared to be valid on the basis of available record* subject to condition that A-Level, O-Level and bachelor degree

should be verified from HEC and IBBC by the PTVC HR Department within the period of two months.

APPOINTMENT OF KHAWAR AZHAR, HEAD OF CONTENT AND MARKETING PTVC

47. Khawar Azhar has been hired through the head hunting firm who claims to have an experience of 20 years in broadcasting, sales and marketing. It was argued by the learned counsel for PTVC that Khawar Azhar remained as Director Marketing, PTVC from 2004 to 2006, even he has won two national prestigious awards i.e. PTV Award and Lux Style Award. His appointment has been made in line with the decision made in 154th Meeting of Board of Directors, dated 23.04.2009, while considering the market trend and to compete with private TV channels. The post was advertised in daily Express Tribune, dated 19.09.2019, by Controller Admin and Personnel, PTVC HQ Office along with other positions for their short listing in database under PTVC Service Rules. The HR Committee of PTVC has already laid down the procedure in meeting dated 03.10.2018, resultantly, interviews of 04 shortlisted candidates have been concluded by the Committee and Khawar Azhar was recommended for the position of Head of Marketing & Content. The recommendation was approved by Board of Directors in 219th meeting, dated 06.11.2018. The Minutes of Meeting have also been perused and it has been observed that Khawar Azhar was appointed on monthly package of Rs.1,230,000/- (5th stage of Executive Special Professional Scale).

48. The available record persuaded this Court to hold that appointment of Khawar Azhar has been made in accordance with law pursuant to fulfillment of due process of selection by observing the standards of transparency.

HIRING OF HEAD HUNTING FIRM

49. The head hunting firm i.e. M/s Career Pakistan was selected by the PTVC on the basis of tender notice, dated 30.08.2019, published in Pakistan Observer,

Jahan-e-Pakistan, Khabrain, Daily Times and Nai Baat for hiring of a head hunting firm through two envelop procedures i.e. technical and financial proposals. Resultantly, M/s Career Pakistan Islamabad, Abacus ELS (Pvt.) Ltd. Lahore, National Testing Services, Islamabad and National Consultants for Business & Management Solutions came on record, whereby the competent authority after evaluating the technical and financial bids selected M/s Career Pakistan, which was declared qualified, rest of three companies have been disqualified in comparative analysis report appended with this writ petition, matter has been placed in 229th Meeting of Board of Directors held on 26.10.2019, which approved the selection of M/s Career Pakistan, the head hunting firm for future recruitment on different positions, as such, due process of selection has rightly been adhered to and no illegality has been observed.

AMENDMENT IN CLAUSES 10.20-A & 10.22-A OF PTVC REVISED LEAVE RULES, 1984 AND MAINTAINABILITY OF WRIT PETITIONS

50. This Court has confronted the petitioners regarding maintainability of their writ petitions as to whether constitutional jurisdiction of this Court could be invoked in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, whereby it has been contended that amendment in PTVC Employee Service Rules, to exercise the right to proceed on LPR exclusively falls within the jurisdiction of the employee concerned and respondent organization has no authority to withdraw the same, and as such, the impugned amendment is in violation of their fundamental rights enshrined in Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973. Even the impugned Rules being ex-facie discriminatory are liable to be struck down in view of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. The petitioners have relied upon 2013 SCMR 1707 (Pakistan Defence Officers' Housing Authority v. Lt. Col. Syed Jawaid Ahmed), 2013 SCMR 1383 (Abdul Wahab v. HBL), 1981 PLC

219 (Pakistan Television Corporation v. Muhammad Babar Zaman), 2005 PLC (CS) 199 (Syed Amjad Ali Shah v. Federation of Pakistan) and 2010 PLC (CS) 1023 (Muzammal Ahmed Khan vs. Imran Meer).

51. Learned counsel for PTVC has taken a categorical stance that PTVC is a State owned corporation having its Board of Directors, which can amend, alter the rules or adopt any new rules or supplement the same as and when required, which were coming subsequently into force, from time to time, subject to approval of the Board in terms of Rules 2.05, 2.06 and 2.07. It has further been highlighted on the strength of PTVC Statement of Financial Position as on 30.06.2018, appended with the captioned writ petition, that PTVC after taxation has suffered a loss of Rs.476,540/- Million in the year 2018 against the income for the said year to the tune of Rs.1,823,096/- Million, whereas total operating expense, including administrative expense and finance cost, is Rs.9,477,304/- Million, even otherwise, they are paying salaries of Rs.4,546,367,862/- in the year 2018, which is apparently much more than their receivable net income and as such, the entire Corporation is running into loss, therefore, the PTVC Board in order to curtail the loss have taken the decision in the major interest of the Corporation as well as to save the losses of the public exchequer. Even, as per the appointment letters of the petitioners, in terms of Clause 5, they are subject to all rules and regulations of the Corporation prevailing for the time being or subsequently coming into force from time to time.

52. The Board of Directors, PTVC in their meeting held on 12.02.2019, circulated vide office order dated 30.07.2019, held that "*the officers/officials working in the establishment of PTVC shall proceed on Leave Preparatory to Retirement (LPR) on recommendation of their respective Head of Divisions*". Pursuant to said direction the petitioners are spared to proceed on LPR with immediate effect till the

date of superannuation. The relevant extract of office order dated 30.07.2019 is as under:

"The Board of Directors in its 225th meeting held on 12.02.2019 has approved to amend the Clauses 10.20 A & 10.22A of Revised Leave Rules-1984 in the following manner:-

*Clause 10.20A: **Leave Preparatory to Retirement***

The maximum period upto which an employee may be granted leave Preparatory to retirement shall be seven Hundred and Thirty (730) days.

*Clause 10.22A: **Encashment of Refused Leave Preparatory to Retirement.***

If an employee has Seven Hundred and Thirty Days (730) days or more period of LPR, on full pay to his credit, he can have his/her LPR encashed for the actual period of LPR subject to a maximum period of three hundred and sixty five (365) days. The employees will be required to apply for LPR 27 months before the date of superannuation. The encashment of LPR will be allowed subject to refusal of leave by the competent authority. In case of encashment he/she cannot avail any portion of his/her LPR.

53. The petitioners contended that in terms of Clause 10.21(A) of the PTVC Employees Service Rules, the LPR may be taken subject to availability of leave either on full pay or partly on full pay, or partly on half pay, or entirely on half pay, at the discretion of the employee concerned, whereas the issuance of office order, dated 30.07.2019, has withdrawn the discretion of the employees, who are the best judge to request the respondent organization for their LPR. Besides the said amendments, the Board has further enhanced the LPR period from 365 days to 730 days and accordingly the employee will be required to proceed on LPR of 27 months before the date of superannuation. The said decision has become effective immediately from its approval by the Board. It is trite law that any decision passed by the Board in terms of Section 168 of the Companies Act, 2017 is conclusive in all respects, even though the appointments of the Directors have been challenged or declared defective for any disqualification.

54. Hassan Immad Mohemmadi (petitioner) has assailed the abolishing of the post of Deputy Managing Director in PTVC in his writ petition along with other claims which have already been discussed in preceding paragraphs, whereas the abolishing or creation of post is the internal affairs of the Board of Directors and as such, their actions have been protected in terms of Section 168 of the Companies Act, 2017, therefore, he being employee of the company is not in a position to challenge the same.

55. One of the petitioners i.e. Asad Ahmad Jaspal, Director Security, PTVC has prayed for issuance of direction to PTVC to maintain seniority list of working Directors and is also aggrieved by the appointment of Hassan Immad Mohemdi in PTVC, whereas the appointment of said Director on Special Assignment has actively been defended by the PTVC. It is the prerogative of employer to transfer or post out any person against any position as required by the department concerned and as such, no employee can raise objection to that effect. Similarly, Rule 4.09 of PTVC Employee Service Rules extends an authority to PTVC to requisition the service of any employee on deputation from Provincial Government or Federal Government or any other organization.

56. Samina Mir, Uzma Naveed Ch., Humera Nasreen Rana and Qaisar Ahmad Rana have also assailed their terminations in their respective writ petitions who were admittedly working in PTVC on contract basis, however the issue raised to their extent relates to the terms and conditions of the employees under the PTVC Employees Service Rules.

57. While considering the above reasons and facts, this Court has to apply the functional test to deal with the maintainability of the writ petition which has been settled by now that all the Rules of an organization, if not approved by the Federal Government, considered for the internal arrangement and functioning of such organization, are to be called non-statutory rules. Reliance is placed upon 1992 SCMR 1093 (University of the Punjab, Lahore v. Ch. Sardar Ali), 1994 SCMR 1024 (M.H. Mirza v. Federation of Pakistan), PLD 1975 SC 678 (Manager,

Jammu & Kashmir, State Property in Pakistan v. Khuda Yar), 2009 PLC (CS) 565 (Sohail Abbas Bokhari v. Secretary Information and Broadcasting/Chairman PTVC), 2017 PLC (CS) Note 71 (Muhammad Ramzan v. Federation of Pakistan), 2017 SCMR 571 (Muhammad Zaman v. Government of Pakistan), 2017 SCMR 2010 (Pakistan Defence Housing Authority v. Mrs. Itrar Sajjad Khan), 2013 SCMR 747 (Muhammad Aslam Khan v. Federation of Pakistan), 2013 SCMR 642 (ZTBL v. Said Rehman), 2014 SCMR 982 (Syed Nazir Gillani v. Pakistan Red Crescent Society), 2013 SCMR 1159 (Muhammad Ashraf Tiwana v. Pakistan, etc.) and 2016 SCMR 2146 (Muhammad Rafi v. Federation of Pakistan). The above referred case law opined that where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute, but only Rules or Instructions issued for its internal uses, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.

58. While applying these principles, it is clear to hold that the PTVC Employees Service Rules are non-statutory in nature and the respondent Corporation through their Board of Directors are empowered to amend the terms and conditions of their employees, even the employees are governed under the principle of master and servant, as such, this backdrop renders such writ petitions not competent in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

CONCLUSION

59. Keeping in view the above settled position, this Court comes to the irresistible conclusion that public sector companies are not allowed to appoint any person without adhering to the criteria of fit and proper person, rather these companies have to act independently, transparently, impartially and in unbiased manner so as to select best and most suitable candidate strictly on merits due to the reason that such persons in the public sector companies are required for their responsibility, planning, succession, management and policy decisions in the

best interest of the company, therefore, the nomination made by the Federal Government through Prime Minister has to be exercised under a structured formula, particularly in this case when the summaries of MoIB regarding appointment of the Members of Board of Directors lacked the transparency as required in the case reported as 2019 SCMR 1, nor even the Members of Board of Directors have been selected from the data bank maintained by SECP in terms of Section 166 of the Companies Act, 2017. The discretion so exercised by the Federal Government is against the constitutional mandate and the principles settled in cases reported as 2010 SCMR 1301 (Tariq Aziz ud Din case), PLD 2012 SC 132 (Muhammad Yasin vs. Federation of Pakistan, etc.), 2013 SCMR 1159 (Muhammad Ashraf Tiwana v. Pakistan, etc.) and PLD 2020 Islamabad 130 (Saira Rubab Nasir vs. President of Pakistan, etc.), and as such, the Federal Government while nominating the members of Board of Directors have not learnt anything from the judgment rendered by the apex Court in the case of *Ata-ul-Haq Qasmi supra*, neither followed the concept embodied in the case of *Mustafa Impex* and nor even the appointments have been processed in a manner provided in the Rules, 2013 or in terms of the Companies Act, 2017. Hence, the sacred duty entrusted to the Federal Government to exercise the public authority for selection of Members of the Board of Directors has been violated, whereby it is mandatorily required to exercise such authority fairly and justly by the functionaries to accomplish the purpose assigned to them by law, as such, it was their bounded duty to choose right persons in all manner without any distinction by objectively selecting best of the best from a competing lot. The selection process under the law discussed above was rooted into the fundamentals of equal opportunities, equal treatment and equal protection, which has also been referred in the divine affirmation referred in the Holy Quran in Surah Nisa. Reliance is placed upon 2020 SCMR 568 (Dr. Shamim Tariq vs. IIUI, etc.). Similarly, all public functionaries must exercise public authority, especially while

dealing with public property, funds or assets in a fair, just, transparent and reasonable manner, untainted by malafide, without discrimination and in accordance with law, keeping in view the constitutional rights of people. Reliance is placed upon 2020 SCMR 513 (Naimatullah Khan, Advocate vs. Federation of Pakistan), therefore, there is nothing left in favour of the Federal Government or the Board of Directors, PTVC as the appointments of all the Members of Board of Directors, PTVC have directly been made by the Federal Government without any structured formula, advertisement or from any data bank, hence, such approvals are considered to be illegal, which otherwise render the appointments of all members of the Board of Directors, PTVC, including the Chairman, PTVC, are illegal.

60. In view of above, this Court has come to the following conclusion:

- a) Arshad Khan/Chairman had received pecuniary benefits while remaining Managing Director of the PTVC for the period of 05 months against salary of Rs.1,760,000/- with other fringe benefits. He subsequently resigned from his position and he was again appointed as Chairman, PTVC for three years w.e.f. 17.06.2019 in 226th Meeting of the Board of Directors without adhering to Section 166(2)(a)(b) & (h) and Section 166(4) & (5) of the Companies Act, 2017 and in violation of Rule 2(d) of the Rules of 2013, whereby he was not appointed from the data bank maintained by the SECP, even he has received remuneration and salary in recent past, which requires at least three years of gap to be appointed in Board of Directors, PTVC for all members. Hence, appointment of Arshad Khan as Chairman, PTVC is hereby declared ILLEGAL. Accordingly, captioned W.P. No.2250/2019, W.P. No.3512/2019, W.P. No.533/2020 and W.P. No.1610/2020 are hereby ALLOWED to the extent of illegal appointment of Arshad Khan as Chairman, PTVC.

- b) Appointment of Amir Manzoor/ Managing Director is declared to be LEGAL as same has been made in the light of criteria laid down in Rules 3(1) and (7) and annexure (fit and proper person) to the Rules of 2013, therefore, captioned W.P. No.533/2020 and W.P. No.1610/2020 is hereby DISMISSED to his extent.
- c) Rashid Ali Khan, Director of PTVC, was appointed without adhering to the Rule 3(4) of the Rules, 2013 where *“no person shall be elected or nominated as Director of more than 5 public sector companies and listed companies simultaneously, except their subsidiaries”* whereas the said respondent is Director of NayaTel Ltd., Microsoft Ltd., Pakistan Engineering Company, NRSP Micro Finance Bank Ltd., Bank of Khyber Ltd., Hayatabad Medical Complex, Peshawar, Sukhchain Real Estate Development, Lahore, NUML University, Mianwali and Elementary Education Foundation, Peshawar, hence, Rule 3(4) of the Rules, 2013 has been violated. Similarly, he is in the Board of Directors of M/s NayaTel Ltd. who is receiving monthly subscription of PTVC in their account and as such, his company has direct substantial business relationship with PTVC, which itself is violation of Rule 2(ii) of the Rules, 2013. Hence, appointment of Rashid Ali Khan as Director PTVC is ILLEGAL. Accordingly, captioned W.P. No.533/2020 is hereby ALLOWED to the extent of appointment of Rashid Ali Khan as Director PTVC.
- d) Farman Ullah Jan was former General Manager of PTVC, Group IX Officer, who could not be treated as Independent Director in terms of Section 166(2)(d) of the Companies Act, 2017, whereby any person who has received remuneration in three years preceding his appointment as Director is disqualified. Hence, he has pecuniary interest in the affairs of PTVC, who is receiving pension and medical benefit from the Corporation, therefore, his appointment is

also declared ILLEGAL. Accordingly, the captioned W.P. No.533/2020, W.P. No.3512/2019 and W.P. No.1610/2020 are hereby ALLOWED to the extent of appointment of Farman Ullah Jan as Member Board of Directors, PTVC.

- e) All other Directors have not been appointed from the data bank maintained by the SECP for Independent Directors in terms of Section 166 of the Companies Act, 2017 and who do not fall within the concept of Independent Directors, therefore, appointment of Members of the Board of Directors are declared illegal, even they have not been selected through an advertisement as required in 2019 SCMR 1. Accordingly, captioned W.P. No.533/2020, W.P. No.3512/2019 and W.P. No.1610/2020 are hereby ALLOWED.
- f) All acts, orders and directions passed by the Board of Directors, PTVC, despite being constituted in violation of law, shall be considered valid in terms of Section 168 of the Companies Act, 2017, therefore, the orders passed in different Board Meetings have been given protection to the extent of terms and conditions of the employees in the service rules of PTVC. Accordingly, captioned W.P. No.3512/2019 is hereby DISMISSED to this extent.
- g) The amendments approved by the Board of Directors, PTVC, vide meeting dated 12.02.2019, regarding Clauses 10.2-A and 10.2-B of the PTVC Revised Leave Rules, 1984 are declared to be LEGAL and protected as the PTVC Board has an authority to amend its rules by majority of decision, even otherwise, same are non-statutory in nature, therefore, writ to that extent is not competent, therefore, captioned W.P. No.4249/2019, W.P. No.171/2020, W.P. No.476/2020 are hereby DISMISSED.
- h) Office order, dated 05.06.2020, whereby services of petitioners namely Samina Mir, Uzma Naveed, Humera Nasreen Rana and

Qaisar Ahmed Rana as News Caster/Anchor Person/Analyst have been de-notified, is UPHELD as W.P. No.1639/2020 and W.P. No.1610/2020 are not maintainable and same are hereby DISMISSED.

- i) W.P. No.1095/2017 is not maintainable as matter relates to internal terms and conditions of employees service, therefore, same is hereby DISMISSED.
- j) W.P. No.3512/2019 is DISMISSED to the extent of claim relating to abolishing the post of Deputy Managing Director as the writ is not competent to the extent of said claim, however status of Hassan Immad Mohemdi (petitioner) is remained as Director Special Assignment, which relates to terms and conditions of employees under non-statutory rules of PTV, therefore, his claim to that extent is DISMISSED.
- k) W.P. No.1610/2020 is DISMISSED to the extent of appointments of Amir Manzoor, Qutrina Hossain and Khawar Azhar as well as to the extent of hiring of head hunting firm i.e. M/s Career Pakistan.
- l) *Crl. Org. No.47-W/2020 and Objection Case No.7150/2018* are hereby DISMISSED having become infructuous.

61. Before parting with this judgment, it has been observed that in majority of the appointments the salary packages are on higher side which requires concurrence of Ministry of Finance on the principle of best practice recorded in 2019 SCMR 1 (in the matter regarding appointment of Director, PTV). Furthermore, the Federal Government is directed to devise a policy for future appointments to be made in all public sectors companies along with the criteria of setting up salary, perks and privileges after consultation with Ministry of Finance and Ministry of Law & Justice.

62. The Federal Government is further directed to nominate the Members of the Board of Directors, PTVCL in accordance with law, within the period of six months, while observing the requirements of the Rules of 2013 and the Companies Act, 2017.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 17.09.2020.

JUDGE

Khalid Z.

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