

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

W.P.No.4032/2018  
Nadeem Mumtaz Qureshi  
**Versus**

Pakistan Petroleum Limited and others

**Date of Hearing:** 26.09.2019  
**Petitioner by:** Mr. Azid Nafees, Advocate.  
**Respondents by:** M/s Afnan Karim Kundi, Adeel Aftab,  
Advocates for respondents No.1 and 2  
M/s Shahzad Ali Rana and Ibrar Saeed,  
Advocate for respondent No.5/S.E.C.P.  
Mr. Muhammad Nadeem Khan Khakwani,  
learned Assistant Attorney-General,  
Mr. Akif Khan, Law Officer.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Nadeem Mumtaz Qureshi, seeks a declaration to the effect that the appointment of Mr. Saeed Ullah Shah (respondent No.2) as acting Managing Director/Chief Executive Officer ("M.D./C.E.O.") of Pakistan Petroleum Limited (respondent No.1) ("P.P.L.") is unlawful. Furthermore, the petitioner seeks an injunction to restrain the respondents from taking any steps for his removal as director of P.P.L.

2. The facts essential for the disposal of the instant petition are that general elections in Pakistan were scheduled to be held on 25.07.2018. Vide letter dated 04.07.2018, the Ministry of Energy (Petroleum Division) asked the Company Secretary of P.P.L. to provide the names and dates of appointment of persons serving as directors/members of the Board who are holding any political party offices. Vide letter dated 11.07.2018, the Company Secretary of P.P.L. informed the Ministry of Energy that other than the petitioner, the rest of the members of the Board of P.P.L. had confirmed that they did not hold any political party office nor had any political affiliations.

3. On 13.07.2018, the Ministry of Energy submitted a summary for the Federal Cabinet proposing that the nomination of two directors (Rahmat Salam Khattak and Prince Ahmed Omer Ahmadzai) on the Board of Oil and Gas Development Company

Limited and one director (Nadeem Mumtaz Qureshi/petitioner) on the Board of P.P.L. be withdrawn so that they do not influence their election campaign and questions about the credibility of the general elections are not raised. The proposal in the said summary was approved by the Federal Cabinet on 18.07.2018. Thereafter, vide letter dated 20.07.2018, the Ministry of Energy informed the Company Secretary of P.P.L. as to the decision of the Federal Cabinet. Furthermore, in the said letter, it was stated that the petitioner, *“on account of his political activities, interests and candidature for the upcoming elections as ticket holder of a political party stands disqualified to act as a Director on behalf of the Government of Pakistan in Pakistan Petroleum Limited.”* The Company Secretary of P.P.L. was advised to inform the Board of Directors and the regulators accordingly.

4. In the 514<sup>th</sup> meeting of P.P.L.’s Board of Directors held on 23.07.2018, it was resolved *inter-alia* to concur with the said decision of the Federal Cabinet and to authorize the Company Secretary of P.P.L. to complete the necessary legal requirements. It may be mentioned that the petitioner did not attend this meeting.

5. One of the agenda items for the 515<sup>th</sup> meeting of the Board of Directors of P.P.L. scheduled to be held on 10.08.2018 was *“to approve the date, time and venue for convening an extraordinary general meeting of the Shareholders for Removing Mr. Nadeem Qureshi from Directorship of the Company.”* In the said meeting, one of the directors of P.P.L. took the position that since the decision dated 18.07.2018 was taken by the interim government and since only a few days remained for a new government to take over, guidance from the new government should be taken. In the said meeting, it was decided that the matter regarding the petitioner’s removal be deferred until guidance from the new government was received.

6. Apparently, guidance was sought from the new government through P.P.L.’s letter dated 30.08.2018. Vide letter dated 24.09.2018, the Ministry of Energy informed the Company Secretary of P.P.L. that the process for removal of Mr. Nadeem Mumtaz Qureshi from the Board of P.P.L. may be initiated under the

law and as per the regulations governing the issue. The said letter dated 24.09.2018 came under discussion in the 519<sup>th</sup> meeting of P.P.L.'s Board of Directors held on 02.10.2018. It was decided that the matter regarding the petitioner's removal from the directorship of P.P.L. be placed before the members at an Annual General Meeting ("A.G.M.") of the Company scheduled to be held on 26.10.2018. The special business in the A.G.M. was to pass a resolution for the petitioner's removal from the directorship of P.P.L. with immediate effect. The statement under Section 134 of the Companies Act, 2017 ("the 2017 Act") included the following:-

*"The Board of Directors of the Company, after due deliberation at a meeting held on 2<sup>nd</sup> October 2018, considers that Mr. Nadeem Mumtaz Qureshi on account of his political activities and candidature for the general elections 2018, has fallen foul of the 'Fit & Proper' criteria prescribed in the Public Sector Companies (Corporate Governance) Rules, 2013. The Board also does not regard it as desirable for office bearers of political parties to be involved with the governance and oversight of the Company, in order that the best interests of the Company are safeguarded at all times."*

7. The P.P.L.'s Board, in its 519<sup>th</sup> meeting dated 02.10.2018, unanimously approved that the matter regarding the petitioner's removal from the directorship of P.P.L. be placed before the members at the A.G.M. scheduled to be held on 26.10.2018.

8. Vide e.mail dated 03.10.2018, the Company Secretary of P.P.L. sent the notice of the 67<sup>th</sup> A.G.M. to the Pakistan Stock Exchange Limited in compliance with Rule 5.6.4(b) of the Pakistan Stock Exchange Rules. This notice was to be published in the Daily "Dawn" and "Jang" on 04.10.2018. Vide e.mail dated 03.10.2018 addressed to the Company Secretary of P.P.L., the petitioner took issue with the text of the special resolution which was to be published the next day. The petitioner also asked the Company Secretary of P.P.L. to ensure that the agreed text was published. Vide e.mail dated 03.10.2018, the Company Secretary of P.P.L. sent the text of the complete notice to the petitioner and informed the latter that as per the standard practice, the special business to be conducted in general meetings is not published with the notice. The petitioner's e.mail dated 03.10.2018 (sent at 08:57 p.m.) to the Company Secretary of P.P.L. shows that the petitioner was asking

for the publication of the notice to be stopped until the draft of the resolution is corrected. The e.mail correspondence between the petitioner and the Company Secretary of P.P.L. continued until 17.10.2018 when the notice of the 67<sup>th</sup> A.G.M. scheduled to be held on 26.10.2018 was issued in the newspapers by P.P.L.

9. Vide letter dated 09.10.2018, the Company Secretary of P.P.L. had requested the Securities and Exchange Commission of Pakistan ("S.E.C.P.") to grant an extension of 30 days for holding the 67<sup>th</sup> A.G.M. Vide e.mail dated 12.10.2018, the Deputy Director of S.E.C.P. declined to grant an extension in holding the 67<sup>th</sup> A.G.M. on the ground that the reasons given by the Company Secretary of P.P.L. for seeking an extension were not cogent. In the said e.mail dated 12.10.2018, it was also observed that any extension in the A.G.M. due to non-publication of notice in the newspapers after the dissemination of the same to the Pakistan Stock Exchange was likely to be prejudicial to the interests of the shareholders of P.P.L. The Company Secretary of P.P.L. was required to convene the A.G.M. as per the date already communicated to the Pakistan Stock Exchange.

10. The 67<sup>th</sup> A.G.M. was held on the scheduled date, i.e. 26.10.2018. Out of the entire shareholding of P.P.L., 84.76% was present and 99.99% out of them voted to remove the petitioner.

11. The instant writ petition was filed on 24.10.2018 praying for the relief mentioned hereinabove. Along with the said petition, the petitioner also filed an application for interim injunction to restrain the P.P.L. from holding the A.G.M. on 26.10.2018. The said petition was taken-up for hearing by this Court on 25.10.2018. Although this Court issued notice to respondents No.1 to 4, ad-interim injunction was not granted. In the order dated 25.10.2018, it was observed *inter-alia* that any steps taken with respect to the petitioner's removal from the directorship of P.P.L. shall be subject to the final outcome of this petition.

12. Mr. Azid Nafees, A.S.C. learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that on 16.09.2017, the petitioner was re-elected as a director on the Board of P.P.L. for a period of three years; that the

petitioner had been so nominated by the Government of Pakistan; that the petitioner could not be removed without the procedure prescribed in Rule 3A.(4) of the Public Sector Companies (Corporate Governance) Rules, 2013 ("the 2013 Rules"); that there is no allegation against the petitioner as to non-compliance with the provisions of the 2017 Act, or misconduct or failure to fulfill duties and responsibilities under the 2013 Rules; that the sole reason why steps were taken to remove the petitioner from the position of a director was that he was going to contest the general elections in July 2018, and that the Federal Cabinet had decided to withdraw the nomination of directors from the boards of public sector companies, including P.P.L., who were going to contest elections and could potentially influence the election process; that since the general elections had already been held, there was no reason to remove the petitioner from the board of P.P.L.; that the Board of Directors of P.P.L., in its 515<sup>th</sup> meeting held on 10.08.2018, decided that the matter regarding the petitioner's removal from the directorship of P.P.L. would be deferred until guidance from the new government was received; that the process to remove the petitioner from the directorship of P.P.L. was initiated by reason of Ministry of Energy's letter dated 24.09.2018; and that the notice for the 67<sup>th</sup> A.G.M. was issued on the basis of Ministry of Energy's letter dated 24.09.2018.

13. Learned counsel further submitted that as per the notice dated 04.10.2018, the special business to be transacted in P.P.L.'s 67<sup>th</sup> A.G.M. scheduled to be held on 26.10.2018, included the petitioner's removal from the directorship of P.P.L.; that an advertisement for the said A.G.M. published on 17.10.2018 made no mention of the said special business; that the advertisement was not in accordance with the law since at least 21 days' notice is required to be given under Section 132(3) of the 2017 Act for holding an A.G.M.; that there was a gap of only 9 days between the publication of the notice on 17.10.2018 and the A.G.M. held on 26.10.2018; that the law requires a minimum period of 21 days between the publication of the notice the holding of an A.G.M.; that the reason for deciding to remove the petitioner from the

directorship of P.P.L. was that he had objected to respondent No.2's appointment as acting M.D./C.E.O. of P.P.L.; that the petitioner wanted one of the three Deputy Managing Directors of P.P.L. to be appointed as the M.D./C.E.O. of P.P.L.; that if there was an allegation of misconduct against the petitioner, there should have been a regular inquiry conducted against him; that the petitioner should have been given a right of hearing before the initiation of the process to remove him; that the petitioner had a secured tenure under the law; and that the process for the removal of the petitioner was conducted in violation of the 2013 Rules. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the law laid down in the case of Salahuddin Vs. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244).

14. On the other hand, Mr. Afnan Karim Kundi, A.S.C., learned counsel for respondents No.1 and 2, submitted that the petitioner is not the only person who was removed pursuant to a policy decision taken by the Federal Cabinet; that the petitioner admittedly contested elections to the National Assembly from the platform of Pakistan Mustaqbil Party; that the petitioner was an "*elected*" Director and not a "*nominated*" Director; that on 16.09.2017, the petitioner was elected in the A.G.M. along with other directors for a period of three years; that all the directors on the Board of P.P.L. are elected; that the Federal Government has majority shareholding in P.P.L. for the purposes of candidature of persons; that Section 163 of the 2017 Act does not place any fetter on the removal of a director; that in all the relevant documents, the petitioner was described as an "*Independent Director*"; and that in the A.G.M. dated 26.10.2018, the petitioner was removed by an overwhelming majority of the shareholders. Learned counsel for respondents No.1 and 2 prayed for the writ petition to be dismissed.

15. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition

have been set out in sufficient detail in paragraphs 2 to 11 above, and need not be recapitulated.

16. Section 164(1) of the 2017 Act provides that in addition to the directors elected or deemed to have been elected by shareholders, a company may have directors nominated by the company's creditors or other special interests by virtue of contractual arrangements. Section 164(2) of the said Act provides that a body corporate or corporation owned or controlled by the Federal Government or, as the case may be, by a Provincial Government may also have directors nominated on the Board to whom such corporation or company has extended credit facilities.

17. The procedure for the removal of nominee directors is provided in Rule 3A.(4) of the 2013 Rules which provides that the removal of a nominated director shall take place (a) if the director has not performed up to a standard, determined through a performance evaluation; (b) if the director is found to be in non-compliance with the provisions of the Ordinance or these rules; (c) if the director fails to fulfill his duties and responsibilities under these rules; (d) if the director fails to comply with or deliberately ignores policy directives of the Government; (e) for any administrative reasons such as posting, transfer, retirement, etc., the Government decides to withdraw the nomination; and (f) in the event of his misconduct.

18. Nominee directors need not go through the process of election envisaged by Section 159 of the 2017 Act. This is because Section 165(1)(b) of the 2017 Act provides that nothing in Sections 158, 159, 161, 162 or 163 of the 2017 Act shall apply to directors nominated by virtue of investment made by the Federal Government or, as the case may be, by a Provincial Government or the Commission on the Board. By virtue of Section 165(1)(b) of the 2017 Act, the process for the removal of an elected director envisaged in Section 163 of the 2017 Act does not need to be followed for the removal of a nominee director.

19. In the A.G.M. held on 16.09.2017, the petitioner was elected as a member of the Board of Directors of P.P.L. after obtaining 1,618,452,349 votes. Prior to this, the Ministry of Energy, vide letter

dated 31.08.2017 to the Company Secretary of P.P.L., had forwarded ten names, including that of the petitioner for restructuring the Board of Directors of P.P.L.

20. In paragraph 2 of the writ petition, it has been pleaded *inter-alia* that “the Petitioner was elected to the Board of respondent No.1 in 2014 as an Independent Director after being nominated by the Government of Pakistan for the position.” It was also pleaded that *“the Petitioner was, after being nominated by the Government of Pakistan, re-elected in 2017, after his previous tenure ended, for another term of three (3) years...”*

21. But for the petitioner’s election in the A.G.M. dated 16.09.2017, he would not have been on the Board of P.P.L. It is, therefore, safe to hold that the petitioner was an elected director even though his name was proposed for directorship by the Federal Government. The petitioner could not be termed as a nominated director since his directorship was by virtue of an election in which he obtained a sizeable number of votes.

22. Since the petitioner was an elected director, he could be removed in accordance with the procedure envisaged by Section 163 of the 2017 Act which provides *inter-alia* that a company by resolution in a general meeting remove a director appointed under Sections 157, 161 or 162 or elected in the manner provided for in Section 159 of the 2017 Act.

23. It is not disputed that P.P.L.’s Board of Directors, in their 519<sup>th</sup> meeting held on 02.10.2018, unanimously approved that the matter of removing the petitioner from the directorship of P.P.L. be placed before the members at the A.G.M. to be held on 26.10.2018. The petitioner was also present in this meeting and had also concurred with the text of the notice and the statement under Section 134 of the 2017 Act read out by the Company Secretary, but requested the Company Secretary to replace the words *“has fallen foul of”* appearing in the said statement. Consequently, the words *“has fallen foul of”* were replaced with the words *“does not comply with.”* Despite this, the petitioner subsequently started taking issue with the text of the notice and in this regard initiated correspondence with the Company Secretary. Through this



correspondence, the petitioner attempted to thwart the process of his removal as a director. The petitioner was well aware that in the A.G.M. scheduled to be held on 26.10.2018, the matter regarding his removal as a director on the Board of P.P.L. was to be subjected to a vote by the shareholders. Vide e.mail dated 03.10.2018, the petitioner explicitly asked to stop the publication of the notice by the Company Secretary. The investigation committee constituted by P.P.L. to inquire into the delayed publication of the notice for the 67<sup>th</sup> A.G.M. submitted a report dated 11.11.2018 according to which the petitioner called the General Manager Corporate Services and directed him to stop the publication of the notice of the A.G.M. which was to have appeared in the newspapers on 04.10.2018.

24. Section 132(3) of the 2017 Act provides that a notice of an Annual General Meeting shall be sent to the members and every person who is entitled to receive notice of general meetings at least 21 days before the date fixed for the meeting: provided that in case of a listed company, such notice in addition to its being dispatched in the normal course to the members, shall also be published in English and Urdu languages at least in one issue each of a daily newspaper of the respective language having nationwide circulation.

25. As mentioned above, the Company Secretary of P.P.L. requested the S.E.C.P. for an extension in the date for holding the 67<sup>th</sup> A.G.M., but the said request was declined by the S.E.C.P. In such circumstances, respondents No.1 and 2 had no option but to hold the A.G.M. on its scheduled date of 26.10.2018.

26. The notice for the 67<sup>th</sup> A.G.M. was admittedly published in the Daily Dawn and Jang on 04.10.2018 and the 67<sup>th</sup> A.G.M. was held on its scheduled date of 26.10.2018. The period between the notice and A.G.M. is not 21 days and therefore, the requirements of Section 132(3) of the 2017 Act have not been complied with. However, it needs to be determined as to what prejudice was caused to the petitioner by such a lapse. The petitioner holds two shares in P.P.L. Learned counsel for the petitioner could not come up with any plausible explanation as to the prejudice caused to the

petitioner by A.G.M. being held 9 days after the publication of the notice to the shareholders. The petitioner was removed by almost 85% of the total shareholding. This is more than the total shareholding of the Government of Pakistan in P.P.L. Therefore, I am not inclined to undo the result of the voting in the 67<sup>th</sup> A.G.M. only because the notice pursuant to Section 132(3) of the 2017 Act was published with a delay bearing in mind that the petitioner was instrumental in causing the delay.

27. It may be mentioned that Section 171 of the Indian Companies Act, 1956 is in *pari materia* to Section 132(3) of the 2017 Act. In the case of Somalingappa Shiva Putrappa Vs. Shree Renuka Sugars Ltd. ((2002) 110 Comp. Cases 371 Karnataka), it was held as follows:-

*“33. The whole object of giving 21 days' notice is to give a reasonable opportunity to the shareholders. If it is demonstrated that such reasonable opportunity has been denied deliberately with mala fide intention and such denial of reasonable opportunity has adversely affected the interest of the shareholders either preventing him from contesting the election or from voting in the election or from campaigning and canvassing the proxies or canvassing the opinion in favour or against a particular resolution, it is always open to the Court on proof of such prejudice to invalidate the proceedings of meetings notwithstanding the fact whether Section 171 is mandatory or not. In the absence of a case of such prejudice being made out, merely on the technical ground that there was no clear notice of 21 days from the date of service of the notice and the meeting neither the meeting nor the proceedings of the meeting could be invalidated. If such a thing is permitted one shareholder can virtually blackmail the company and prevent the company from holding its meeting or passing any resolution, thus, successfully obstructing the proper functioning of the company itself. Certainly that is not the intention of the Legislature in enacting Section 171.”*

28. In the case of Shailesh Harilal Shah Vs. Matushree Textiles Ltd. ((1995) 82 Comp. Cases 5 Bombay), it was held as follows:-

*“27. ... It is obvious that the plaintiffs never complained of any prejudice suffered because of shorter duration of notice and the contention urged by Shri Kapadia with reference to the correspondence is imaginary. In Paashuram Dararam Shamdasani Vs. Tata Industrial Bank Ltd., AIR 1928 PC 180, it was held that the shareholders knowing the work to be transacted at the meeting and remaining absent cannot subsequently complain about insufficiency of notice for convening the meeting. In our judgment, the plaintiffs have not suffered any prejudice whatsoever by the notice being of only 20 clear days instead of 21 clear days and it is obvious that the plaintiffs are set up by Arunkumar Poddar who has personal quarrels with defendants Nos. 2 and 3 who are his real brothers. The shareholding of the plaintiff is extremely negligible*

*being 0.3 per cent and it would be entirely unreasonable to invalidate the business transacted at the annual general meeting at the behest of these few shareholders and to the detriment of a large body of shareholders who had unanimously approved the resolutions moved at the meetings.”*

29. The Corporate Supervision Department of the S.E.C.P. had issued show cause notice dated 30.10.2018 to the Company Secretary of P.P.L. for not sending or publishing a notice with respect to the A.G.M dated 26.10.2018 within the time prescribed in Section 132(3) of the 2017 Act. While sending this notice, S.E.C.P. appears to have lost sight of the fact that P.P.L.’s Company Secretary’s request dated 09.10.2018 to extend the date of holding the A.G.M. so that the requirements of Section 132(3) of the 2017 Act were complied with was turned down by none other than the Deputy Director of the S.E.C.P. vide e.mail dated 12.10.2018.

30. In view of the above, I do not find any merit in this petition which is accordingly dismissed with no order as to costs. As regards the prayer in the writ petition for declaring respondent No.2’s appointment as acting M.D./C.E.O. of P.P.L., the same has been rendered infructuous since he is no longer holding the said position.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2019

(JUDGE)

*Qamar Khan\**

**APPROVED FOR REPORTING**