

IN THE SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

Present:

Justice QaziFaez Isa, CJ
Justice IrfanSaadat Khan
Justice Naeem Akhtar Afghan

Civil Review Petition No. 835/2018 in HRC No. 3654/2018

(For review of order dated 8.11.2018 of this Court passed in HRC No.3654 of 2018)

AND

Civil Review Petitions No. 866, 867 and 868/2018

[Appointment of Managing Director, Pakistan Television Corporation]

In

CMA Nos. 11306 and 11172 of 2018

Pervaiz Rasheed. (Petitioner in CRP. 835/18)

Mohammad Ishaq Dar. (Petitioner in CRP. 866/18)

Fawad Hassan Fawad. (Petitioner in CRP. 867/18)

Attaul Haq Qasmi. (Petitioner in CRP. 868/18)

For the Petitioner:

Mr. M. Zafar Ullah Khan, ASC
Syed Rifaqat Hussain Shah, AOR.
(In CRP. 835/18)

Mr. Salman Aslam Butt, Sr. ASC.
Mr. Shoaib Rashid, ASC
(In CRP. 866/18)

Mr. Fawad Hassan Fawad, In-person.
(In CRP. 867/18)

Mr. Muhammad Akram Sheikh, Sr. ASC.
(In CRP. 868/18)

On behalf of PTV:

Mr. Muhammad Nazir Jawwad, ASC.

Date of Hearing:

21.03.2024.

JUDGMENT

Qazi Faez Isa, CJ. All these review petitions assail the judgment dated 8 November 2018 of this Court. This judgment is in respect of the appointment of Mr. Attaul Haq Qasmi ('**Mr. Qasmi**') as a Director of Pakistan Television Corporation ('**PTV**'). Later the Board of Directors of PTV elected Mr. Qasmi as its Chairman and he was also given the responsibility of PTV's Managing Director ('**MD**'). The matter of PTV's head came to the

attention of this Court (as stated in order dated 29 January 2018) when hearing another matter pertaining to PTV it was noted that PTV was functioning without an MD for a period of one year and seven months. An advertisement seeking applicants for the position of MD was published on 23 September 2017, but no one who had applied for the position was found to be a suitable candidate. Subsequently, a summary was initiated by the Ministry of Information suggesting that Mr. Qasmi may be appointed as a Director/Chairman of PTV. The summary was approved by the Prime Minister of Pakistan. This Court expressed reservations about Mr. Qasmi's appointment on account of the huge amount being spent on him. In order dated 2 February 2018 it was noted (in paragraph 7) that Mr. Qasmi had received an amount exceeding two hundred and seventy million rupees (Rs.270,000,000) over two years, the period he held the position of Director/Chairman of PTV. On 26 February 2018, this Court appointed Ernst & Young Pakistan auditors to conduct a thorough audit of the expenditures incurred and borne by the PTV with regard to Mr. Qasmi.

2. The judgment under review is premised on the audit report of the said auditors, and concluded that Mr. Qasmi's appointment was illegal and that he had caused a loss of one hundred ninety-seven million, eight hundred sixty-seven thousand, four hundred and ninety-one rupees (Rs.197,867,491), therefore, this amount should be recovered in the following percentages from four persons as under:

Mr. Ataul Haq Qasmi.	50%
Mr. Pervaiz Rashid, Minister for Information	20%
Mr. Ishaq Dar, Finance Minister	20%
Mr. Fawad Hassan Fawad, Secretary to the Prime Minister	10%

Being aggrieved by the judgment dated 8 November 2018 the aforesaid four persons have filed these review petitions.

3. Learned senior counsel Mr. Muhammad Akram Shaikh, representing Mr. Qasmi, submits that this Court erred in involving its original jurisdiction because the matter of which notice was taken (appointment of Mr. Qasmi and payments made to him) did not come within the preview of Article 184(3) of the Constitution of the Islamic Republic of Pakistan ('**Constitution**'), as the stipulated conditions therein, that is, the matter

being one of public importance and requiring the enforcement of Fundamental Rights were not involved. Learned senior counsel submits that though reference has been made to the Fundamental Rights mentioned in Articles 18 and 25 of the Constitution but the same had no application to the facts of this case. As regards the purported loss caused to PTV, he submits that the total amount paid to Mr. Qasmi for the period he had served as the Director/Chairman of PTV and also performed the duties of MD, that is, from 23 December 2015 to 18 December 2017 (which was when he resigned) was only thirty-five million, eight hundred and six thousand, four hundred and fifty-two rupees (Rs.35,806,452). And, the amount which was shown as the loss suffered by PTV was a notional amount derived by adding the commercial value of the air time of the programme hosted on PTV by Mr. Qasmi, for which Mr. Qasmi was not paid.

4. Learned counsel Mr. Zafar Ullah Khan, represents Mr. Pervaiz Rashid, who at relevant time was the Minister for Information, supports the contentions of learned senior counsel Mr. Muhammad Akram Sheikh. He further states that there was no reason for apportioning the purported loss amount and directing that 20% of such amount be paid by his client. Learned counsel submits that there was no basis to allege and hold that there had been corruption and/or nepotism as neither was there any evidence of corruption nor was the allegation of nepotism in appointing Mr. Qasmi justified because he was neither related to Mr. Pervaiz Rashid nor was he his friend.

5. Learned counsel Mr. Salman Aslam Butt adopts the submissions already made by the learned counsel and adds that his client, who was then the Finance Minister, contrary to what was stated in the judgment under review had filed a reply and that the observation that he did not attend the court was un-called for as at the relevant time he was out of the country. Concluding his submissions he submitted that his client had nothing to do with Mr. Qasmi's appointment.

6. Mr. Fawad Hassan Fawad (in person) adopts the submissions of the learned counsel and further states that the observations made against him with regard to the non-observance of due diligence and for not submitting three names to the Prime Minister to choose from were uncalled for, and

that these two observations were made by incorrectly applying the instructions contained in the Esta Code, which was not applicable for the appointment of a Director and Chairman of PTV, which appointment was governed by PTV's governing charter, the Companies Act 2017 and the Public Sector Companies (Corporate Governance) Rules, 2013. He further states that Mr. Muhammad Malick, who was the previous MD of PTV, was being paid a monthly salary of one million three hundred and eighty thousand rupees (Rs.1,380,000) and that Mr. Qasmi, who was appointed a few years later, was paid a slightly higher salary, of one million and five hundred thousand rupees (Rs.1,500,000), and to such an increase (little over ten percent) no exception could be taken.

7. On the last date of hearing we had inquired from the learned counsel representing PTV, what was PTV's position and in response PTV has filed CMA No.2220/2024 wherein it is stated that it does not support the impugned judgment and that the review petitions may be allowed. We inquired from the learned counsel representing PTV about the salary and the total amount received by Mr. Qasmi, and he confirmed that he was paid a monthly salary of Rs.1,500,000 and that a total amount of Rs.35,806,452 was paid to him, and that the purported loss amount statedly caused by Mr. Qasmi was not correct.

8. We have heard the learned counsel and have examined the record. The scope of review jurisdiction is limited, however, it can be invoked when a mistake of law or a factual error, having material consequences, has occurred.

9. Article 184(3) of the Constitution is an extraordinary power bestowed by the Constitution on the Supreme Court and it may be invoked when Fundamental Rights of the people are under attack or are being undermined. It is questionable whether the emoluments of a single individual would justify invoking the jurisdiction of this Court under Article 184(3). The applicability of the referred Articles 18 and 25 is also not self-evident, and it has not been explained in the judgment under review, how either of these two provisions were attracted.

10. The factual determination of the purported loss was arbitrary and also incorrect. Mr. Qasmi was paid just a little more than his predecessor, which if inflation is factored in would be justified. And, it was a material

error to assume that Mr. Qasmi's programme's air time was lost revenue; it could also be contended that his programme contributed towards PTV's earnings. It would not be fair to penalize someone on the basis of mere conjecture. There is no evidence to suggest that an amount of Rs.197,867,491 was paid to Mr. Qasmi or that he had caused such a loss to PTV. As regards the salary of one million and five hundred thousand rupees being paid to Mr. Qasmi is concerned, it was just a little over what was paid to the previous MD, which was an important fact which was overlooked and also the fact that Mr. Qasmi's increased salary a few years later could be justified on account of inflation. In these circumstances, to seek the recovery of an arbitrarily determined loss was neither legally permissible nor factually correct. Moreover, to make liable the then Minister for Information, Minister for Finance and the Secretary to the Prime Minister with regard to half the purported loss amount, and to pay it, had no legal basis, was without precedence and was not justified, and to do so when there was nothing on record to suggest that they had financially benefited from Mr. Qasmi's appointment nor was there any proof of nepotism on the record.

11. Therefore, for the foregoing reasons, these review petitions are allowed and judgment dated 8 November 2018 passed in HRC No.3654 of 2018 is hereby recalled.

Chief Justice

Judge

Judge

Islamabad:
21.03.2024
(M. Saeed)

Approved for reporting.