

## **ORDER SHEET.**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD.** **JUDICIAL DEPARTMENT.**

#### **W.P No. 3877 of 2023**

Muhammad Javed Akhtar

***Versus***

Federation of Pakistan through Secretary Finance and others

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
	20.12.2023	M/s Mirza Mahmood Ahmed, Saadullah Tahir and Aziz ur Rehman Farooqi, Advocates. Mr. Muzaffar Ahmed Mirza, Chief Prosecutor and Syeda Muneeza Fatima, SPP, SECP. Syed Ansar Hussain, Deputy Director, State Bank of Pakistan. Mr. Aqeel Akhtar Raja, AAG. Barrister Ummer Ziauddin, Mr. Raza ur Rehman and Mr. M. Saleem Iqbal Janjau, Advocates for respondent No.4. Mr. Ossama Shahid Khawaja and Mr. Saif Ullah Khan, Advocate for respondents No.7 and 13. Hafiz Bakhtiar Ahmed, Advocate for respondent No.8. Mr. M. Zeeshan Khan, Advocate for respondent No.10. Mr. Jehanzeb Durrani, Advocate for respondent No.12. Mr. Umer Ijaz Gillani, Advocate for respondent No.9. Syed Ishtiaq Haider, Advocate for respondent No.11. Mr. Imran Hussain, S.O, Finance Division. Syed Ansar Hussain, Deputy Director, State Bank of Pakistan. Mr. Saif Ullah Khan, Deputy Zonal Head, Punjab Provincial Cooperative Bank. Mr. Muhammad Faheem Sr. Manager, PSPC.

The arguments of learned counsel for the petitioner are documented in order dated 24.11.2023.

2. Learned counsel for Respondent No.4 stated at the outset that the petition was not maintainable for three reasons. One, the petitioner was essentially seeking relief

against Respondent No.4, which was a registered company based in Karachi and fell outside the territorial jurisdiction of this Court. Two, the petitioner only had a handful of shares in the company which were procured on 28.09.2023 for purpose of acquiring some standing for filing the instant petition. For purposes of section 160 of the Companies Act, 2017 ("**Companies Act**") a shareholder entitled to challenge an election had to satisfy a ten percent threshold. For purposes of section 477 a shareholder had to cross a threshold of five percent. He submitted that the petitioner could claim appropriate remedies under the Companies Act if he were aggrieved by the actions of respondent No.4, but if he did not satisfy the conditions prescribed therein he could not be allowed to file a constitutional petition to defeat the provisions of the Companies Act. Three, the petitioner was the Chief Financial Officer ("**CFO**") of Fauji Fertilizer Bin Qasim Limited. While he was seeking implementation of section 11 of the State-Owned Enterprises (Governance and Operations) Act, 2023 ("**SOE Act**"), he was himself disqualified under clause 11(j) of SOE Act and could not contest the election of Respondent No.4 as an independent director.

3. Learned counsel for the petitioner responding to the objections to the maintainability of the petition submitted that he was seeking relief against respondents No. 1, 2 and 3 for purposes of enforcement of provisions of the SOE Act and Public Sector Companies (Corporate Governance) Rules,

2013 (**"Public Sector Companies Rules"**), which respondents were based within the territorial jurisdiction of this Court. He further submitted that as the petitioner was not seeking to challenge the election for the Board of Respondent No.4 under provisions of the Companies Act, but was seeking the enforcement of section 166 of the Companies Act and provisions of the SOE Act, he did not need to satisfy threshold requirements under section 160 of the Companies Act. He also submitted that as CFO of Fauji Fertilizer Bin Qasim Limited, the company was owned by Fauji Foundation and was not a state-owned enterprise.

4. The Court is not impressed with the arguments of learned counsel for the petitioner. While this Court can issue a direction to respondents No. 1 to 3 for purposes of enforcement of provisions of the SOE Act, Companies Act and Public Sector Companies Rules, it has to take into account the dominant object of the petition, which in this case appears to be to preempt an election as it challenges a notification for convening of election of independent members to the Board issued by Respondent No.4. This Court cannot allow circumvention of the provisions of the Companies Act and allow a petitioner to do indirectly which the law does not permit him to do directly. To the extent that a minority shareholder is aggrieved by a breach of section 166 of the Companies Act, such shareholder has an appropriate remedy under section 160 of the Companies Act which can be availed.

5. The Court has further taken note of the fact that the petitioner is serving as CFO of Fauji Fertilizer Bin Qasim Limited, which is wholly-owned by Fauji Foundation, which itself is a trust owned and controlled by the Ministry of Defence. Learned counsel for the petitioner has failed to make out a case that the petitioner is not disqualified as an independent director under section 11(j) of SOE Act. The arguments that have been canvassed at the bar with regard to respondent 13, as an employee of state-owned enterprise, appear to be fully applicable to the petitioner as well. However, notwithstanding his own apparent disqualification under the SOE Act, the instant petition has been brought by the petitioner to prevent respondents No. 11 to 13 from contesting election to the Board of Respondent No.4 as independent directors. In this view of the matter, the Court finds that the petitioner has no cause of action and has sought to abuse the process of the court for a collateral purpose. The petition is therefore **dismissed** with cost in the amount of Rs.300,000/- to be paid by the petitioner to Respondent No.4.

5. In the report filed by Securities and Exchange Commission of Pakistan ("**SECP**") it has been stated that the SECP has initiated regulatory action under section 166 of the Companies Act read together with provisions of Public Sector Companies Rules against some of the respondents and show cause notices have been issued for such purpose. Given that the regulator is already seized of the matter, any

observation by the Court in relation to the eligibility of respondents No. 11 to 13 could affect the due process right of such individuals. This Court would therefore exercise restraint and expects that the SECP will adjudicate the matter in accordance with law.

**(BABAR SATTAR)  
JUDGE**

Saeed.