

IN THE LAHORE HIGH COURT, LAHORE.

C.M. NO. 02/2013 IN WP NO. 5459/2013.

PRESENT MR JUSTICE. SYED MANSOOR ALI SHAH

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Lahore High Court, Lahore

PETITION UNDER SECTION 151 CPC.

PRAY PARTY NAMES ATTACHED.

ORDER P.T.O.

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9/3/13

ORDER SHEET**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No: W.P. No.5459/2013

Khawaja Saad Saleem

Versus

Federation of Pakistan, etc.

| S.No. of order/ Proceeding | Date of order/ Proceeding | Order with signature of Judge, and that of parties of counsel, where necessary. |
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01. 07.03.2013 Mr. Babar Sattar, Advocate for the petitioner.

Submits that respondent No.4 (Farooq Ahmed Awan) relinquished his charge as Chairman, Pakistan Telecommunication Authority ("PTA") on the basis of Short Order dated 15.01.2013 passed in W.P. No.29005/2012. Later on vide Notification dated 29.01.2013 the said respondent was transferred and directed to report to Establishment Division.

2. Grievance of the petitioner is that the said respondent has again been appointed as Member (Finance), PTA on deputation basis, on standard terms and conditions, till posting of regular incumbent vide Notification dated 01.03.2013 issued by the Establishment Division, Cabinet Secretariat, Government of Pakistan. It is further contended that the appointment has been allegedly made under Rule 4 (2) (b) of Pakistan Telecommunication Authority's Chairman and Member (Appointment and Qualifications) Rules, 2013 ("Rules").

3. The contention of the petitioner is that appointment Notification, as well as, Rule 4 (2) (b) of the Rules are in violation of judgment of this Court dated 15.01.2013 passed in W.P. No.29005/2012 in the case of respondent No.4. It is further submitted that the above judgment of this Court has

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categorically held that a nominee of the Federal Government cannot be appointed as Member of PTA as it is in violation of conflict of interest as envisaged under Section 3 (4) of the Pakistan Telecommunication Authority (Reorganization) Act, 1996. It is contended that the appointment of respondent No.4 is once again without any public advertisement and Rule 4 (2) (b) of the Rules to this extent is in violation of the aforesaid judgment, as well as, law settled on the point.


4. Admit. Let notice be issued to the respondents for 19.03.2013.

C.M.No.1/2013

5. Dispensation prayed for is allowed subject to all just and legal exceptions. C. M. disposed of.

C.M.No.2/2013

6. Notice for the above date. Till the next date of hearing, respondent No.4 (Farooq Ahmed Awan) is restrained from performing his duty as Member (Finance), PTA with immediate effect.


(Syed Mansoor Ali Shah)
Judge

M. Tahji*

9/3/13

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Qanun-e-Shahadat Order, 1984

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IN THE HONORABLE LAHORE HIGH COURT, LAHORE

Writ Petition No. 5459/2013

Khawaja Saad Saleem, son of Khawaja Saleem-ud-Din, resident of House No. 256, Shadman Colony I, Lahore, bearing CNIC No. 61101-9357551-1.

....Petitioner

Versus

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1. Federation of Pakistan, through Secretary Cabinet Division, Government of Pakistan;
2. Establishment Secretary to the Government of Pakistan, Establishment Division, Pak Secretariat, Islamabad;
3. Pakistan Telecommunication Authority (PTA), through its Chairman, PTA Headquarters, Sector F-5/1, Islamabad; and
4. Mr. Farooq Ahmed Awan, posted as Member Finance Pakistan Telecommunication Authority, PTA Headquarters, F-5/1, Islamabad.

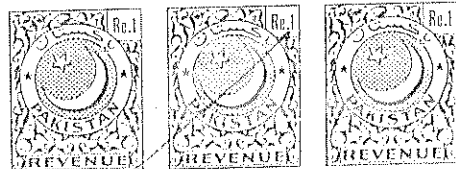
....Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION
OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973

The Petitioner respectfully submits as under:

PARTIES AND THEIR RELATIONSHIP TO THE SUBJECT MATTER

1. The Petitioner is a citizen and resident of Lahore, a shareholder and director of Nayatel (Pvt.) Limited (that has been issued a local loop license by Respondent No. 3 to provide telecom services) as well as a consumer of telecom services, whose fundamental rights under the Constitution are being infringed by Respondents No. 1-3. The illegal and *ultra vires* action detailed hereinbelow.



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Prayer

In view of the foregoing, it is most humbly prayed that the operation of the Impugned Notification dated 01/03/2013 vide which Respondent No. 4 has been appointed as Member (Finance) of Respondent No.3 be suspended till the disposal of the instant writ petition;

Any other relief that may be deemed just and appropriate in the circumstances by the Honourable Court may also be granted to the Petitioner.

Applicant

through

Babar Sattar
Advocate High Court

Mansoor Usman Awan
Advocate High Court
P.L. HN 039731

AJURIS, *Advocates and Corporate Counsel*
251-B, Street 4, F-10/3, Islamabad
Ph. 2112910-1 Fax. 2112912

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ORDER SHEET**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**Case No: W. P. No. 5597/2013.

Amjad Farooq Alvi.

Versus

Federation of Pakistan etc.

| S.No. of order/ Proceeding | Date of order/ Proceeding | Order with signature of Judge, and that of parties of counsel, where necessary. |
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| 01. | 08.03.2013. | M/s Ch. Muhammad Umar, Ch. Muhammad Atiq and Mufti Ahtsham-ud-Din Haider, Advocates for the petitioner. |
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Submit that the role of the Federal Government as envisaged under the Pakistan Telecommunication (Re-Organization) Act, 1996 ("Act") is in violation of article 154 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"). It is contended that under article 154 of the Constitution it is the Council of Common Interest (CCI) which has to formulate and regulate policies relating to the regulatory authorities established under a federal law, as mentioned in Item No.6 of Part-II of the Federal Legislative List, hence Item No.53 of the Rules of Business, 1973 vesting the administrative control in the hands of the Cabinet Division is also offensive to article 154 of the Constitution.

2. It is further contended that rule 4 (2) (b) of the Pakistan Telecommunication Authority's Chairman and Member (Appointment and Qualifications) Rules, 2013 ("Rules") is ultra vires section 3 (4) of the Act read with the judgment of this Court dated 15.01.2013 passed in W.P. No.29005/2012.

3. Further submit that the qualifications of the Members prescribed in Schedule-I to the above Rules are deficient and unreasonable. They submit that the qualificational requirement of Member (Finance) does not include the requirement of MBA (Finance) and in

the case of Member (Technical) and Member (Compliance and Enforcement) the Membership of the Pakistan Engineering Council is missing.

4. Learned counsel establishing his locus standi submit that the petitioner is a shareholder in M/s Brain Telecommunication Limited which is a Telecommunication Services Provider and a licensee under the Act and is, therefore, aggrieved of the unlawful and unconstitutional regulation of PTA in the telecom sector.

5. Notice to the respondents for 19.03.2013. Respondents No. 1 to 4 and 6 will file their parawise comments before the next date of hearing.

6. As a question of interpretation of constitutional law is involved in this case, let notice be issued under section 27-A of the CPC to the Attorney General for Pakistan, who will seek instructions and assist the Court on the next date of hearing.

7. To come up on 19.03.2013 alongwith connected W.P. No.5459/2013.

C. M. No. 01/2013.

8. Dispensation prayed for is allowed subject to all just and legal exceptions. C. M. disposed of.

C. M. No. 02/2013.

9. Notice for the above date. Till the next date of hearing, respondents are restrained from making any fresh appointments under Rule 4 (2) (b) of the Rules.

10. Copy *dasti* on payment of usual charges.

(Syed Mansoor Ali Shah)
Judge

Form No:HCJD/C-121
ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No: Crl. Org. No. 540-W/2013..

Khawaja Saad Saleem.

Versus

Mrs. Nargis Sethi etc.

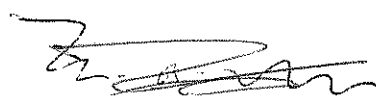
| No. of order/ proceeding | Date of order/ Proceeding | Order with signature of Judge, and that of parties of counsel, where necessary. |
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01. 08.03.2013. Mr. Ghulam Rasool Ijaz, Advocate for the petitioner.
Mr. Nasim Kashmiri, Deputy Attorney General for
Pakistan.
Mian Irfan Akram, Advocate for respondent No.4.

As notices have already been issued in the connected matters (Crl. Org. No.525-W/2013), for the same reasons, let notice be issued to the respondents for 15.03.2013 who will file replies to the instant petition supported by affidavits before the next date of hearing. In case the replies are not on the record before the next date of hearing, they shall appear in person before this Court.

2. Let a copy of this petition be handed over to the learned Deputy Attorney General who will inform the said officers and ensure that the replies are filed in time.

3. To come up alongwith Crl. Org. No. 525-W/2013 on 15.03.2013.


(Syed Mansoor Ali Shah)
Judge

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