

**IN THE SUPREME COURT OF PAKISTAN**  
**(ORIGINAL JURISDICTION)**

**PRESENT:**

MR. JUSTICE MIAN SAQIB NISAR, HCJ  
MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE IJAZ UL AHSAN

**HUMAN RIGHTS CASE NO.3654 OF 2018**

(In the matter regarding appointment of Managing Director, Pakistan Television Corporation)

In attendance: Mr. Khalid Jawed Khan, Attorney General for Pakistan  
Syed Nayyar Abbas Rizvi, Addl.A.G.P.  
**(Assisted by Barrister Asad Rahim)**

Sardar Ahmed Nawaz Sukhera, Secy. M/o Information  
Mr. Tahir Khushnood, D.G. (IP) M/o Information  
Mr. Nasir Jamal, ex-D.G. (IP) M/o Information  
Mrs. Saba Mohsin, ex-Addl. Secy. Information

Mr. Yousaf Naseem Khokhar, Secretary Interior  
Mr. Muhammad Azam, ex-Secretary Interior

Mr. Abdul Hameed Anjum, Member FBR  
Dr. M. Iqbal, Member FBR

Mr. Saleem Baig, Chairman PEMRA  
Dr. Waqar Masood, ex-Secretary Finance  
Mr. Fawad Hassan Fawad, ex-Secy. to P.M.  
Mr. Nadeem Hasan Asif, ex-Secy. Establishment

Mrs. Ayesha Hamid, ASC  
**(For Ata ul Haq Qasmi)**

Mr. Nazir Jawad, ASC  
Mr. Zahoor Barlas, DMD PTV  
**(For PTV)**

Mr. Munawar Iqbal Duggal, ASC  
**(For Pervaiz Rashid)**

Mr. Imran-ul-Haq, Special Prosecutor NAB  
Mr. Shariq A. Zaidi, Sr. Partner Ernest & Young

Date of hearing: 12.7.2018

**JUDGMENT**

**MIAN SAQIB NISAR, CJ:-** The issue in this case was highlighted during the course of hearing of another matter pertaining to Pakistan Television Corporation Limited (*PTV*) when it came to the Court's notice that the Managing Director (*MD*) of PTV had not been appointed since the completion of the tenure of the last MD on 22.02.2016. The report sought from the learned Attorney General for Pakistan (*AG*) in this regard *prima facie* revealed that while the office of the MD of PTV remained vacant, that of the Chairman was occupied by Mr. Ata ul Haq Qasmi from

23.12.2015 to 18.12.2017 and during his tenure, a sum of Rs.284,163,733/- was paid to him and/or expense incurred by him or on his behalf. During the proceedings it also transpired that there were irregularities/illegalities in Mr. Qasmi's appointment. Summaries were moved for relaxation of the upper age limit of 65 years for such appointment and for the approval of a handsome salary package of Rs.1,500,000/- in addition to other perks. Be that as it may, this Court directed a renowned audit firm, Ernst and Young Pakistan (*the Auditor*), to conduct an audit with regards to, *inter alia*, Mr. Qasmi's salary, and the expenses incurred by him or on his behalf. The Auditor submitted a report (*Audit Report – Volume I & II*) to this Court. This case was conducted over many dates of hearing and arguments of the learned counsel for Mr. Qasmi, learned AG, and various Government officials (*in person and through their learned counsel*) were heard at length. Initially Mr. Fawad Hasan Fawad and Mr. Pervaiz Rashid stated that the learned Additional AG, Mr. Waqar Rana, would argue on their behalf, however subsequently Mr. Fawad opted to explain his position himself, while Mr. Pervaiz Rashid made submissions himself and through counsel.

2. Before proceeding further we will deal with certain preliminary issues. Though not specifically raised during the course of hearing, we consider it appropriate to mention that this Court has jurisdiction in this matter under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (*the Constitution*). It came to the Court's notice that blatant irregularities/illegalities (*details of which are highlighted in this opinion*) existed involving Mr. Qasmi's appointment as a Director and the Chairman of PTV and the fixation of his terms and conditions (*including a handsome salary package along with perks/benefits/allowances*). It was apparent from the face of the record that there was nepotism and misuse of authority regarding Mr. Qasmi's appointment as Director/MD PTV. Therefore it was well within the powers of this Court to determine the validity of such appointment and fixation of

salary etc. The question then arises whether PTV, a public sector company, is a person performing functions in connection with the affairs of the Federation. The test in this regard was laid down by this Court in the case of **Salahuddin Vs. Frontier Sugar Mills & Distillery (PLD 1975 SC 244)** which was relied upon in the case reported as **Abdul Wahab and others Vs. HBL and others (2013 SCMR 1383)** in which this Court, while holding that Habib Bank Limited was a private entity, observed that:-

*“...in order to bring the Bank within the purview and the connotation(s) of a ‘person’ and ‘authority’ appearing in Articles 199, 199(5) and 199(1)(c) of the Constitution and also for the purposes of urging that appropriate order, in the nature of a writ can be issued independently by this Court under Article 184(3) (Constitution), to the Bank, the learned counsel for the petitioners has strenuously relied upon the ‘function test’...In this context, it may be held that **for the purposes of resorting to the ‘function test’, two important factors are the most relevant i.e. the extent of financial interest of the State/Federation in an institution and the dominance in the controlling affairs thereof...**”*

*[Emphasis supplied]*

Considering the facts and circumstances of the instant case, we are of the opinion that PTV, the national broadcaster, fully satisfies the test in that it is substantially under the control of the Federal Government. PTV is a public limited company with the Federal Government holding the entire paid up share capital of Rs.1529.3 million. Thus the Government has a major financial interest in PTV. Moreover, as per the notification dated 23.12.2015 issued by the Ministry of Information, Broadcasting & National Heritage (MOIBNH) (reproduced below in paragraph 4 of the opinion), majority of the Directors (six out of eight), i.e. (i) Mr. Qasmi (Federal Government nominee); (ii) Additional Secretary, MOIBNH; (iii) Additional Secretary (Admn), Ministry of Foreign Affairs; (iv) Additional Secretary (B), Ministry of Finance; (v) Director General, ISPR; and (vi) Managing Director, PTV, are

representatives of the Federal Government which constitute the Board of Directors. Therefore the Federal Government completely controls the affairs of PTV. In light of the above, PTV satisfies the definition of Public Sector Company provided in Rule 2(1)(g) of the Public Sector Companies (Corporate Governance) Rules, 2013 (*Rules of 2013*) (*reproduced hereinbelow*) and thus the control of PTV vests in a substantial manner in the hands of the Federal Government:-

**2. Definitions.-** (1)(g) “Public Sector Company” means a company, whether public or private, which is directly or indirectly controlled, beneficially owned or not less than fifty 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.

In light of the foregoing, PTV is a person performing State functions and therefore the validity of appointment of its Director and Chairman, Mr. Qasmi, can be examined, particularly considering the seemingly arbitrary manner in which he was appointed, despite being overage to hold such an important office. He was given an immensely generous salary package together with other perks and benefits. On account of complete lack of skill and experience of running a company, PTV, once a profitable institution, experienced a sharp decline both financially and in its reputation as a major player in the electronic media market. It was burdened with an exorbitant amount of expenses on account of inefficient and inept management. In the context of the proper role of State agencies in the management of public sector enterprises, it was held in **Habibullah Energy Limited and another Vs. WAPDA through Chairman and others (PLD 2014 SC 47)** that:-

*“28. An overview of the judgments reproduced or referred to herein above leaves little room for doubt that it is now a well-settled principle of law that **all public functionaries must exercise public authority, especially while dealing with the public property, public funds or assets in a fair, just, transparent and reasonable manner, untainted by mala fide without discrimination and in accordance with law, keeping in view the Constitutional Rights of the Citizens.**”*

*[Emphasis supplied]*

Hence notwithstanding the fact that Mr. Qasmi had resigned from his position, this Court has ample jurisdiction to consider a matter where it appears that public money has been misused through the corrupt practice of nepotism and favouritism by giving excessive salary/perks/privileges and incurring other undue expenses causing loss to the public exchequer. When the law is being blatantly flouted by the Executive at the expense of a national institution promoting public awareness and understanding of events, culture and heritage, and public money is showered on a chosen few as a favour without regard to qualification or merit, it undeniably becomes a matter of public importance. This Court is well within its powers to take cognizance of the matter under Article 184(3) of the Constitution on account of violation of the fundamental rights of the citizens, including those guaranteed under Article 18 and 25 of the Constitution. Even otherwise, this Court has the power to do complete justice under Article 187 of the Constitution.

3. Learned counsel for Mr. Qasmi raised certain preliminary objections vis-à-vis the Audit Report. As far as the objection to the disclaimers in the Audit Report is concerned, we reject this objection as unfounded because they are standard disclaimers that are routinely and as a matter of professional propriety inserted in every audit report. These do not affect the veracity of the Audit Report. Moreover, the record submitted to the Auditors has been verified by PTV's officials and we do not believe

that further verification is required. As regards the objection that the Audit Report states that the Auditors did not involve Mr. Qasmi in the audit process, and therefore he should not be condemned unheard, suffice it to say that Mr. Qasmi was issued a notice to appear in Court in person to explain his position. However, he chose to be represented by counsel. It is worthy to note that learned counsel for Mr. Qasmi herself prayed (*in C.M.A. No.98/2018*) for the matter to be referred to an auditor. Besides, she was given full opportunity to respond to the record brought before this Court by PTV and the Audit Report. As such, this objection is also overruled.

4. Before delving into the reasons for our opinion, we find it expedient to provide a detailed account of the factual background of the instant matter. On 23.09.2015, Mr. Mohammad Azam, Secretary MOIBNH submitted a policy note seeking special exemption from the Cabinet Division's instructions of 09.10.2007 regarding the upper age limit of 65 years for the appointment of heads of autonomous bodies under MOIBNH:-

*As discussed, it is considered view of this Ministry that in case of certain specialized media – literary organizations (Lok Virsa, Pakistan National Council of the Arts, Pakistan Academy of Letters and Pakistan Television Corporation). **The Government requires highly professional and experienced candidates** from open market to provide professional leadership to the said organizations.*

*2. The presence of Cabinet Division's instructions of 9<sup>th</sup> October, 2007 obligating this Ministry to observe upper age bracket of 65 years limits the choice of the Government for hiring really experienced professionals in media and literature who actually attain specialized excellence in post 65 years age bracket.*

*[Emphasis supplied]*

A draft summary was accordingly issued for the approval of the Prime Minister (*PM*), the contents whereof mirror the aforementioned policy note. It also mentioned the following:-

4. *It is proposed that Prime Minister may kindly relax this upper age limit to the extent of following MOIBNH jurisdictional organizations as a special case:-*

a. *Lok Virsa.*

b. *Pakistan National Council of the Arts.*

c. *Pakistan Academy of Letters.*

d. *Pakistan Television Corporation.*

5. *Minister for Information, Broadcasting & National Heritage has seen and approved the submission of the Summary.*

Mr. Javaid Aslam, Secretary to the PM, vide letter dated 29.09.2015 sought a clarification from MOIBNH on *inter alia* the following:-

6. *Ministry of Information, Broadcasting and National Heritage may clarify the following:*

iii. *The specific grounds for seeking exemption from the subject instructions in respect of the organizations mentioned at para 4 of the summary may also be explained including the literary and media related nature of these organizations and the benefits of having veterans as Chairpersons of these organizations.*

In response thereto, Mr. Mohammad Azam, Secretary MOIBNH vide letter dated 05.10.2015 clarified *inter alia* as under:-

7. *Prime Minister's Office directions at (Para – 6) of the Summary refer MOIBNH clarification is explained below:-*

c. *MOIBNH four jurisdictional organizations listed at Para – 4 of the Summary, by nomenclature, reflect their professional operations in terms of art, culture, media, literature and issues relating to higher learning in designated professional disciplines. Capping the senior appointments up to the age of 65 is respect for routine GOP bodies – but not in the instant case where people of higher learning and proven understanding / achievements are required to contribute – who normally attain this position in (sic) beyond 65 years age bracket that entitles them to be on the national canvass.*

Subsequently, Mr. Fawad Hasan Fawad, Additional Secretary to the PM issued a letter dated 22.10.2015 which read as follows:-

9. *In view of the justification given in para 7 of the summary, the Prime Minister has been pleased to approve the proposal at para 4 of the summary.*

Thereafter, Ms. Saba Mohsin Raza, Additional Secretary, MOIBNH issued a summary to the PM dated 30.10.2015 for the appointment of the Chairman of PTV. The important parts of the summary read as below:-

2. *The composition of the eight-Members Board of Directors for PTVC has been notified vide M/o IB&NH No.1(11)/2001-TV, dated 22 October 2007 (Annex-I). **One of the Directors has to be an eminent person from the media to be appointed by the Federal Government and that position is lying vacant.***

3. *The framework for appointment of Chairman/Director PTVC is governed by following set of laws and regulations:-*

a) *Section – 183 (b) of the Companies Ordinance – 1984 empowers the Federal Government to notify the composition of the Board of Directors of PTVC. The said Section empowers the Federal Government by stating that nothing in Sections – 178, 180 or 181 shall apply to “Directors nominated by the Federal Government or a Provincial Government on the BOD of the Company” (Annex-2).*

b) *Article-95 of PTVC’s Memorandum & Articles of Association (Annex-3) states that the “BOD 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 he 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”.*

4. *It is, therefore, proposed that:-*



- a. **Mr. Atta ul Haq Qasmi who is an eminent literary personality with nationwide recognition in the disciplines of poetry, drama, literature and media** (CV at Annex-5) **may be appointed as Director of the Company for a period of three years and also act as Chairman of PTVC.**
- b. *Mr. Atta ul Haq Qasmi is 72 years old, however, the Prime Minister has already relaxed the upper age limit (65 years) for appointment of Heads of M/o IB&NH four jurisdictional organizations vide an earlier approved Summary (22-10-2015 – Annex-6), which includes PTVC Chairman.*
6. **Approval of the Prime Minister is solicited to the proposal contained in Para-4 (a & b) and Para-5 above.**
7. **Minister for Information, Broadcasting and National Heritage has seen and approved the submission of the Summary.**

*[Emphasis supplied]*

Mr. Nadeem Hassan Asif, Secretary Establishment issued a letter dated 13.11.2015 stating the following in furtherance of the foregoing summary:-

8. *...the Prime Minister may approve appointment of Mr. Atta ul Haq Qasmi as Director of PTVC and may also like to convey direction of the Federal Government to the Board of Directors to elect him as Chairman, PTVC.*
10. *Proposal at para 6, read with paras 8&9, is submitted for orders of the Prime Minister, please.*

Subsequently, Mr. Fawad Hassan Fawad, Secretary to the PM, issued the following approval dated 23.11.2015:-

11. *The Prime Minister has been pleased to approve the proposal at para 6 read with paras 8 and 9 of the summary.*

Thereafter, a notification dated 23.12.2015 was issued by MOIBNH:-

*With the approval of the Competent Authority, and in partial modification of this Ministry's earlier Notification No. 1(11)/2001-TV dated 22<sup>nd</sup> October, 2007, and in exercise of the power conferred under Section – 183 (b) of the Companies Ordinance – 1984, the Government of Pakistan is pleased to re-notify the composition of the Board of Directors of PTVC, with appointment of Federal Government nominee, Mr. Atta-ul-Haq Qasmi as one of the Directors as well as Chairman of the Board of Directors of the Corporation – as follows :-*

- |  |  |
|--|--|
| 1. Mr. Atta-ul-Haq Qasmi<br>(Federal Government nominee)                         | Member and Chairman<br>of the PTVC Board<br>of Directors |
| 2. Additional Secretary,<br>M/o Information, Broadcasting<br>& National Heritage | Ex-officio Member  |
| 3. Vice Chancellor, Allama<br>Iqbal Open University                              | Ex-officio Member  |
| 4. Additional Secretary (Admn),<br>M/o Foreign Affairs                           | Ex-officio Member  |
| 5. Additional Secretary (B),<br>M/o Finance                                      | Ex-officio Member  |
| 6. Director General, ISPR  | Ex-officio Member  |
| 7. Managing Director, PTVC   | Ex-officio Member  |
| 8. Director General, PBC   | Ex-officio Member  |

*2. Mr. Atta-ul-Haq Qasmi as Federal Government nominee shall, unless he resigns earlier, hold office for a period of 3 years. The above administrative re-composition of the Board is to be read in sync with PTVC's Memorandum and Articles of Association (Article – 95) which are in line with the Provisions of the Companies Ordinance – 1984.*

*3. The terms and conditions of Mr. Atta-ul-Haq Qasmi's appointment shall be decided separately by Ministry of Information, Broadcasting & National Heritage.*

Another summary for the PM dated 08.01.2016 was moved by Ms. Saba Mohsin Raza, Acting Secretary MOIBNH regarding the terms and conditions of Mr. Qasmi's appointment as the Chairman of PTV:-

2. *Mr. Qasmi has been appointed in terms of Section – 183 (b) of the Companies Ordinance – 1984, read with, PTVC’s Memorandum and Articles of Association (Article – 95) as one of the Directors of the PTVC’s Board against the position of “one eminent person from the media to be appointed by the Federal Government” in terms of MOIBNH earlier notification (22<sup>nd</sup> October, 2007: Annex – 4). Mr. Qasmi has been appointed for three years tenure which is protected under Public Sector Companies Corporate Governance Rules – 2013 (Rule – 5 : 1) that states as under :-*

i. *“A Director, once appointed or elected, shall hold office for a period of three years, unless he resigns or is removed in accordance with the provisions of Companies Ordinance – 1984”.*

3. *It may be noted that the **appointment against the said position did not warrant open advertisement in terms of Civil Establishment Code – 2007 (Volume – I: Chapter – 2 : SI. No. 141 : sub para – iii : a & b : Page – 216 - 217) – as the appointment has been made under Section – 183 (b) of the Companies Ordinance – 1984, read with, PTVC’s Memorandum and Articles of Association (Article – 95).***

5. *The operation of the Ministry of Finance Public Sector Management Grades vide their O.M of (24<sup>th</sup> December, 2012 : Annex – 5) is not warranted in this case as the appointment has not been made through an open advertisement in terms of Civil Establishment Code – 2007 (Volume – I : Chapter – 2 : SI. No. 141 ; sub para – iii : a & b : Page – 216 - 217). Instead, other set of Law of the Land has been applied.*

6. *Above in consideration, **Mr. Atta ul Haq Qasmi’s terms and conditions of appointment have been worked out (Annex – 6) that would entitle him to receive a consolidated salary package of Rs. 15,00,000/- (net of taxes) per month, which approximately is slightly higher than what Mr. Muhammad Malick MD – PTV is currently being paid (Rs. 13,80,000/- per month : net of taxes).***

7. *Minister for Information, Broadcasting & National Heritage has seen and approved submission of the Summary.*

8. *Prime Minister is requested to approve the proposal at Para – 6 above.*

*[Emphasis supplied]*

Mr. Waqar Masood Khan, Finance Secretary issued a letter dated 26.02.2016 which reads as under:-

9. *Finance Division endorses the proposal at para-6 of the Summary.*

Thereafter Mr. Fawad Hasan Fawad, Secretary to the PM issued the following letter dated 28.02.2016:-

10. *The Prime Minister has seen and is pleased to approve the proposal contained in para 6, as endorsed by Finance Division vide para 9 of the summary.*

Finally *vide* notification dated 29.02.2016, the terms and conditions of appointment of Mr. Qasmi as the Chairman of PTV were issued:-

2. *...the competent authority has approved following terms and conditions of the appointment of Mr. Atta-ul-Haq Qasmi, Chairman, Pakistan Television Corporation (PTVC), with effect from 23<sup>rd</sup> December, 2015, as given below:-*

<i>1</i>	<i>2</i>	<i>3</i>
<i>Sl. No.</i>	<i>Subject</i>	<i>Terms &amp; Conditions</i>
<i>1.</i>	<i>Salary &amp; Allowances</i>	<i>Rs. 15,00,000/- (net of taxes)</i>
<i>2.</i>	<i>Leave</i>	<i>As admissible to MP – I public office holders.</i>
<i>3.</i>	<i>TA/DA</i>	<i>As admissible to MP – I public office holders.</i>
<i>4.</i>	<i>Period of Contract</i>	<i>For three years in terms of Article – 95 of PTVC’s Memorandum and Articles of Associations to be determined by the PTV BOD on directions of the Government of Pakistan, read with, Rule – 5 of Public Sector Companies Corporate Governance Rules – 2013.</i>

5.	<i>Medical and Entertainment</i>	<i>As admissible to MP – I public office holders.</i>
6.	<i>Termination of Contract</i>	<i>One month's notice on either side or payment of one month's salary in lieu thereof.</i>
7.	<i>Conduct and Discipline</i>	<i>As per Civil Servants Conduct Rules – 1964.</i>
8.	<i>Administrative and Financial functions</i>	<i>As detailed in Public Sector Companies Corporate Governance Rules – 2013.</i>
9.	<i>Administrative and professional framework</i>	<i>As detailed in PTVC's Articles and Memorandum of Association enabled under Companies Ordinance – 1984.</i>
10.	<i>Reporting Channel</i>	<i>As detailed in Rules of Business – 1973 (Schedule – II : Entry – 16 : provision – 13 : ii : a).</i>
11.	<i>Verification of antecedents on first appointment in public sector</i>	<i>In line with Civil Establishment Code – 2007 (Volume – I : Chapter – 2 : SI. No. 17), read with, Civil Establishment Code – 2007 (Volume – II : Chapter – 9 : SI. No. 170 – 172).</i>

3. *Pakistan Television Corporation Limited (PTVCL) Management is advised to take further necessary action in this regard.*

5. From the foregoing factual background emanate the following questions of law which will be addressed accordingly:-

- i. Whether Mr. Qasmi's appointment to the post of Director and/or Chairman of PTV was legal/valid in light of the relevant law and the Articles of Association of PTV (AoA)?
- ii. Irrespective of the answer to question No.i, whether Mr. Qasmi was legally entitled to the salary package that he received in light of the relevant law and the AoA and whether the expenses incurred by Mr. Qasmi or on his behalf were legal/valid?
- iii. If the answers to questions No.i and ii are in the negative, who is to be held responsible for such illegal appointment and/or expenditure?

[Note:- Since the duration of Mr. Qasmi's term includes periods both prior to and post the promulgation of the Companies Act, 2017 on 30.05.2017, the Companies Ordinance, 1984 will be deemed to be applicable to the former, and the Act to the latter.]

**i. Whether Mr. Qasmi's appointment to the post of Director and/or Chairman of PTV was legal/valid in light of the relevant law and the AoA?**

6. Learned counsel for Mr. Qasmi referred to Section 183(b) of the Companies Ordinance, 1984 (*the Ordinance*) read with Articles 95 and 106 of the AoA to argue that PTV was bound by any nomination made by the Federal Government, therefore Mr. Qasmi's appointment as a Director and the Chairman of PTV was legally valid. She stated that the Federal Government exercised its discretion that it thought fit at the relevant time and this Court has no jurisdiction to interfere with such discretion/decision making power. She relied on Rule 4(4) of the Rules of 2013 to submit that while the Chairman of the Board of Directors (*Board*) of a Public Sector Company is to be elected by the Board of such company, this does not apply where the Chairman of the Board is appointed by the Government; besides, not being elected as Chairman by the Board is a curable defect as per Section 185 of the Ordinance; nonetheless his appointment was ratified by the Board as is evident from the minutes dated 12.04.2016 of the 211<sup>th</sup> Board meeting. According to her, if the Court is to judge his qualifications, then it should also examine his performance at the end of the tenure, and that Mr. Qasmi was instrumental in bringing in extra revenue to PTV by his actions. She also pointed out that the age relaxation was not specific to him. As regards Mr. Qasmi's credentials, learned counsel highlighted a number of honorary awards and positions he occupied previously and his literary contributions.

7. The learned AG referred to Article 95 of the AoA and stated that the Chairman of PTV is to be elected by the Board and there is no role of MOIBNH or the PM. He candidly mentioned that paragraph 4(a) of the summary for appointment dated 23.09.2015 establishes that there was no

earlier process of advertisement. Even otherwise the learned AG was of the view that Mr. Qasmi was not qualified to hold the post of Chairman.

8. This question about the legality of the appointment of Mr. Qasmi can be subdivided into two parts: (i) Mr. Qasmi's appointment as a Director of PTV; and (ii) his appointment as the Chairman of PTV. With respect to the first part, the primary provision of law is Section 183(b) of the Ordinance which states that *"Nothing in section 178, section 180 or section 181 shall apply to...directors nominated by the Federal Government...on the board of directors of the company."* Sections 178, 180 and 181 of the Ordinance pertain to the procedure for election of directors, the term of office of directors, and removal of directors, respectively and by virtue of Section 183(b) thereof, they do not apply to such nomination by the Federal Government. According to Article 83 of the AoA, *"Subject to the provisions of Section 183 of the Ordinance, the Government of Pakistan shall have the right to nominate directors who shall hold office during the pleasure of the Government of Pakistan..."* (note:- while learned counsel for Mr. Qasmi referred to Article 106 of the AoA, we do not find it to be relevant to this case as it pertains to election and removal of directors and directives of the Government of Pakistan with respect to any casual vacancy on the Board of Directors). Therefore under the law the Federal Government has the power to nominate a Director to the Board of PTV.

9. An important question that stems from the foregoing is what is the **criteria** on the basis of which such nomination is to be made? Rule 3(1) of the Rules of 2013 provides that *"The Board shall consist (sic) of executive and non-executive directors...with the requisite range of skills, competence, knowledge, experience and approach so that the Board as a group includes core competencies and diversity considered relevant in the context of the Public Sector Company's operations."* Furthermore, according to Rule 3(7) of the Rules of 2013, *"The appointing authorities, including the Government...shall apply the fit and proper criteria given in the Annexure in making nominations of the persons for election as Board members under the provisions of the Ordinance."* The Annexure to the Rules of 2013 provides a

non-exhaustive list of the criteria for the purpose of determining as to whether a person proposed to be appointed as a director is a fit and proper person. According to such list the person should, amongst other things, be at least a graduate, a reputed businessman or a recognized professional with relevant sectoral experience, have financial integrity, no convictions or civil liabilities, be known to have competence, have good reputation and character, have the traits of efficiency and honesty, and does not suffer from any disqualification to act as a director stipulated in the Ordinance or from a conflict of interest, etc. [Clause (1) of the Annexure]. The Annexure also provides certain conditions for disqualification [Clause (2) thereof]. These criteria prescribed by the Rules of 2013 ensure that highly competent and capable people are appointed to the Boards of Public Sector Companies so that such companies are run in a smooth and efficient manner. In the instant case, while PTV is a media organization and therefore experience in the relevant sector of media would undoubtedly be helpful. At the end of the day PTV is a big company with an annual turnover of Rs.8.778 billion in the year 2014 but a comprehensive loss of Rs.1.467 billion;<sup>1</sup> an annual turnover of Rs.9.4 billion in the year 2015 but a comprehensive loss of Rs.0.437 billion;<sup>2</sup> and an annual turnover of Rs.9.54 billion but a comprehensive loss of Rs.1.736 billion.<sup>3</sup> Business management skills and experience of running a big company are the basic requirements for an MD/Chairman to efficiently run such a huge commercial enterprise. While we refrain from commenting as to whether Mr. Qasmi indeed possessed such skills, the point to be noted is that nowhere from the record produced before us was it evident that the Federal Government considered such criteria while nominating Mr. Qasmi as a Director of PTV. In fact, the summary dated 30.10.2015 moved to the PM for Mr. Qasmi's appointment as a Director and the Chairman of PTV fails to state his business

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<sup>1</sup> PTV's Annual Report 2014.

<sup>2</sup> PTV's Annual Report 2015.

<sup>3</sup> PTV's Annual Report 2016.



management and media sector skills, whilst answering the AoA requirement that “*One of the Directors has to be an eminent person from the media*”. This depicts the myopic and stubborn resolve of the Federal Government to accommodate Mr. Qasmi against the said position.

10. Another pertinent question that must be answered is what is the **manner** in which such nomination is to be made? Paragraph 3 of the summary for the PM dated 08.01.2016 regarding the terms and conditions of Mr. Qasmi’s appointment as the Chairman of PTV states that “*the appointment against the said position did not warrant open advertisement in terms of Civil Establishment Code – 2007 (Volume – I: Chapter – 2 : SI. No. 141 : sub para – iii : a & b : Page – 216 - 217) – as the appointment has been made under Section – 183 (b) of the Companies Ordinance – 1984, read with, PTVC’s Memorandum and Articles of Association (Article – 95).*” At this juncture it is necessary to examine SI. No. 141 of the Civil Establishment Code (*Esta Code*) which contains the Policy Guidelines for Contract Appointments for posts in Autonomous/Semi-Autonomous Bodies, Corporations, Public Sector Companies etc. owned and managed by the Federal Government:-

**In order to regulate contract appointments in Autonomous/Semi-Autonomous Bodies, Corporations, Public Sector Companies etc., owned and managed by the Federal Government, the Chief Executive has been pleased to lay down the following policy guidelines:–**

(i) **In the case of tenure posts, appointment to which is regulated by specific provisions of a law, rule and policy instructions, contract appointments may be made in the manner prescribed in the applicable law, rules and policy guidelines/directions issued by the Federal Government.**

(ii) *For projects which have a limited life...*

(iii) **For posts other than those mentioned at (i) and (ii) above contract appointments should be made only subject to fulfillment and observance of the following conditions:**

(a) *Where the nature of a particular job/vacant position requires contract appointment for a specific period,*

**standing instructions should be issued by the administrative Ministry/Division concerned, after consultation with the Chairman of the Board of Directors/Board of Governors, specifying such posts and the parameters governing appointment on contract basis against such posts.**

- (b) **Vacancies should be advertised in the leading national and regional newspapers.**
- (c) **Selection should be made through regularly constituted Selection Committees/Boards.**

*\*[(v) The contract appointment, where justified, may be made for a period of two years initially, on standard terms including termination clause of one month's notice or one month's pay in lieu thereof. Extension may be made on two yearly basis].*

*[Emphasis supplied]*

As mentioned above, the summary dated 08.01.2016 simply stated that Clause (iii) of SI. No.141 did not apply to the instant case because Mr. Qasmi was appointed under Section 183(b) of the Ordinance read with Article 95 of the AoA. While at first glance it may seem that appointment as a Director of PTV is “regulated by specific provisions of a law, rule and policy instructions” as per Clause (i) of SI. No.141 and thus no advertisement for such post is required, it must be seen whether or not such post is a ‘tenure post’. In the case of **Pakistan Vs. Fazal Rahman Khundkar and another** [PLD 1959 SC (Pak.) 82] this Court held that:-

*...the expression “tenure post” as defined by Fundamental Rule 9 (30-A) is “a permanent post which an individual Government servant may not hold for more than a limited period”. The meaning of the expression was considered very recently by this Court in the case of Mr. M. H. Khan (PLD 1959 SC (Pak.) 13)...where it was held by the majority of the Judges who heard the case that by definition, a tenure post is one which cannot be held for more than the prescribed period without an order of extension; it is not to be understood to mean a post which is to be held for the period prescribed, once the appointment is made.”*

While it is prescribed in Rule 5(1) of the Rules of 2013 that a Director, once appointed or elected, is to hold office for a period a three years, Directors nominated by the Federal Government are to hold office 'during the pleasure of the Government of Pakistan' (*Article 83 of the AoA*). This is bolstered by Section 183(b) of the Ordinance which states that Section 180 thereof does not apply whereunder Directors are to hold office for a term of three years. Thus this particular post (*Director of PTV appointed by the Federal Government*) does not fall within the definition of 'tenure post' as explained above and therefore Clause (i) of SI. No.141 does not apply. Rather Clause (iii) thereof is attracted which stipulates certain conditions that must be fulfilled and observed before appointments can made to other contract posts. These conditions are: (i) issuance of standing instructions by the administrative Ministry/Division concerned, after consultation with the Chairman of the Board/Board of Governors, specifying such posts and the parameters governing appointment on contract basis against such posts; (ii) advertisement of vacancies in the leading national and regional newspapers; and (iii) selection through a regularly constituted Selection Committee/Selection Board. No cogent reasons were provided in the summary dated 08.01.2016 to justify the non-applicability of Clause (iii) of SI. No.141 of the Esta Code. Going further, it is pertinent to note SI. No.140 of the Esta Code which provides the guidelines according to which the cases of appointment to various posts in autonomous/semi-autonomous bodies are to be processed. Being a public limited company, PTV is an autonomous public sector organization albeit regulated by company law. For the appointment of a Director of PTV, SI. No.140 iii.(a) is relevant which reads as under:-

SI. No.	Nature of Case	Selection Procedure	Approving Authority
iii. (a)	Appointment to posts in Management Grades other than of a Finance Member/Director and	Selection Board headed by the Secretary of the Ministry/Division concerned to consider and recommend	Prime Minister/Chief Executive

	those covered by (i) <sup>4</sup> and (ii) <sup>5</sup> above	from a panel of three names for each vacancy.	
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Therefore while Sl. No.141 *ibid* requires, *inter alia*, selection through a regularly constituted Selection Board, according to Sl. No.140 *ibid*, such Board is to be headed by the Secretary of the Ministry of MOIBNH to consider and recommend from a panel of **three** names for the vacancy of Director of PTV which was not so done in the instant case. Only one name was put forward, that of Mr. Qasmi.

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.

12. We shall now examine the law with respect to the second part of the question regarding Mr. Qasmi's appointment as the Chairman of PTV. Rule 4(4) of the Rules of 2013 in force at the time of Mr. Qasmi's appointment provided that, "*The Board shall elect its chairman from amongst the independent directors so as to achieve an appropriate balance of power, increasing accountability, and improving the Board's capacity for exercising independent judgment.*"

<sup>4</sup> Appointment of Chief Executive/Head of the Organization.

<sup>5</sup> Posting of government servants of (a) BS-21 and above; and (b) BS-20 and above.

It is worth noting that Rule 4(4) of the Rules of 2013 relied upon by the learned counsel for Mr. Qasmi during the course of hearing that, *“The chairman of the Board shall be elected by the Board of Directors of the Public Sector Company. However, this provision shall not apply where chairman of the Board is appointed by the Government”* only came into force on 21.04.2017 vide S.R.O. No.275(I)/2017 issued by the Securities and Exchange Commission of Pakistan after Mr. Qasmi had retired, which substituted the originally enacted Rule 4(4) of the Rules of 2013. Be that as it may, according to Article 95 of the AoA, *“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.”*

We are not persuaded to read Article 95 of the AoA to mean that election ought to have taken place only in the absence of any directives received by the Federal Government as argued by the learned counsel for Mr. Qasmi as that would render the first part of Article 95 *supra* redundant. Her argument that nothing turns on the fact that the Board did not formally elect the Chairman ignores the point that requirements of the law (*including those stipulated in the AoA*) must be followed in letter and spirit and no one, including the Government, can be allowed to flout and disregard such requirements. When confronted whether a meeting of the Board was convened in this regard, Mr. Pervaiz Rashid stated that according to his recollection, a Board meeting was held but the minutes were not recorded. Be that as it may, the minutes of the 211<sup>th</sup> Board meeting held on 06.01.2016 were brought to our attention wherein under item No.1 it was stated that, *“Mr.Atta ul Haq Qasmi has taken over the charge of the post of Chairman, PTVC w.e.f. 23.12.2015...it is proposed that...nomination of Mr.Atta ul Haq Qasmi, as Chairman/Director, PTVC Board of Directors/Government of Pakistan’s nominee may be confirmed from the same date.”* We do not find this to have been done in

accordance with law for the reason that this meeting was held after the notification of Mr. Qasmi's appointment as Chairman was issued on 23.12.2015 and after he had assumed charge as Director and Chairman of PTV *vide* Charge Assumption Report of even date. Therefore, Mr. Qasmi's appointment as Chairman of PTV is also declared to be illegal.

Before proceeding to the second question, we consider it appropriate to mention that Article 95-A of the AoA is an alternate provision dealing with the situation where the Board of PTV elects a person as Chairman when it (*the Board*) *“is of the opinion that a person be elected as Chairman whose presence would bring, in the opinion of the Board, prestige to the Company then it may elect such person as the Chairman whether he is or is not a Director of the Company.”* Although this Article does not apply to the instant matter and it was no one's case that it does, even if we were to assume for argument's sake that Mr. Qasmi was appointed as Chairman under Article 95-A *supra*, such appointment would again be hit by the reasoning above that the Board had never elected Mr. Qasmi as Chairman. Neither any Board meeting was held for the said purpose nor was any Board resolution passed to that effect.

13. The foregoing discussion clearly suggests that the illegal appointment of Mr. Qasmi as a Director and the Chairman of PTV was undertaken in a systematic and methodical manner, beginning from the special exemption from the upper age limit of 65 years for the appointment of heads of autonomous bodies under MOIBNH to the summary for Mr. Qasmi's appointment. No justification was provided for relaxation of the upper age limit. When confronted, Mr. Pervaiz Rashid, the then Minister for Information, stated that his department assisted him in the matter of the summary for appointment of Mr. Qasmi after which the matter went to the Establishment Division which never sent the summary back to him. He stated this was not the first time that a Chairman was appointed or paid remuneration, and that no law or rules were violated. We find that Mr. Rashid did not have the power or authority to decide and propose (*even in*

*consultation with his department*) on his own, the name of any particular individual for the post in question. No advertisement was made, no criteria was laid down and no qualifications were taken into account. The discretionary power of appointing a Director under Section 183(b) of the Ordinance cannot be reduced to a simple 'cherry picking' of Mr. Qasmi by the Federal Government, rather as per Article 9 of the Constitution and various judgments of this Court, a transparent procedure of appointment should have been adopted, in this case in line with SI. No.141 of the Esta Code, which *inter alia* entails publishing an advertisement to gauge the talent pool available for such post, filtering and then assessing the best candidates for the post in accordance with the criteria laid down in the Rules of 2013. In this case admittedly there was no advertisement for appointment to the said post thus there was no consideration of any pool of potentially capable candidates from which Mr. Qasmi was chosen. In fact, the process started and ended with his name, and was therefore person-specific, rendering the exercise colorable and tainted with nepotism and mala fide. We are in no manner of doubt that every endeavor was made to turn Mr. Qasmi's appointment into a reality. While the Federal Government has the power to nominate a Director on the Board of PTV and even issue directives to such Board to elect a Chairman, the proper procedure provided in law and the relevant rules, guidelines and criteria as discussed above had to be followed when making such appointments. This Court held in **Ghulam Rasool Vs. Government of Pakistan (PLD 2015 SC 6)**<sup>6</sup> that:-

*“9. ...The Federal Government has been expressly empowered by the Legislature to make high-level appointments in accordance with the criteria specified in the concerned Acts / Ordinances. In case of companies incorporated in the public sector under the Companies Ordinance, 1984, the appointment and removal of Directors is*

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<sup>6</sup> See also **Khawaja Muhammad Asif Vs. Federation of Pakistan (2013 SCMR 1205)** wherein this Court discussed the parameters to be followed by the Government while making appointments to public bodies.

*comprehensively dealt with under the said Ordinance and the memorandums, rules/regulations framed thereunder. However, it is also made clear that the Court's deference to the Executive Authority lasts for only as long as the Executive makes a manifest and demonstrable effort to comply with and remain within the legal limits which circumscribe its power. Even where appointments are to be made in exercise of discretionary powers, such powers are to be employed in a reasonable manner.”*

Failure of the Federal Government to exercise its discretionary powers in a reasonable manner meant that it had exercised its power arbitrarily and at its own whim and caprice. The Federal Government not only bypassed the law, but took active steps for appeasement upon which this Court expresses its disapproval and dismay. In light of the above, Mr. Qasmi's appointment as a Director and the Chairman of PTV is declared to be illegal and without any lawful effect.

ii. **Irrespective of the answer to question No.i, whether Mr. Qasmi was legally entitled to the salary package that he received in light of the relevant law and the AoA and whether the expenses incurred by Mr. Qasmi or on his behalf were legal/valid??**

13. Learned counsel for Mr. Qasmi argued that his salary was the Federal Government's decision alone and he cannot be attributed any blame in this regard. Therefore the letter dated 29.02.2016 fixing his terms and conditions of appointment is valid and Mr. Qasmi was legally entitled to the salary and monetary benefits including other perks, privileges, and allowances, etc.. However, when confronted with the question why Mr. Qasmi was given a tax free salary of Rs.1,500,000/- when no Chairperson of any other similar entity was drawing such amount, learned counsel had no satisfactory explanation except that some previous Chairmen of PTV also drew generous salaries, but no evidence was provided to substantiate such claim. She also attempted to justify the same by stating that Mr. Qasmi was the de facto MD of PTV which according to her warranted such



generous salary. In this regard, the learned AG pointed out that the posts of MD and Chairman are distinct. He submitted that according to the letter dated 29.02.2016, Mr. Qasmi was entitled to perks including leave, TA/DA and medical etc. as admissible to MP-I public office holders. However in fact he had unlimited entitlement for entertainment and other heads pursuant to minutes of the 119<sup>th</sup> Meeting of the Board of PTV held on 17.02.2000 (*confirmed at the Board meeting held on 11.03.2000, hereinafter referred to as the "Board Resolution 2000"*). According to Article 95-A of the AoA the post of Chairman is honorary in nature thus he is not entitled to any remuneration. As regards the expenses outlined below, the learned AG submitted that they were unnecessary, arbitrary and whimsical. He stated that while the matter could be referred to the National Accountability Bureau (NAB), he was of the view that Mr. Qasmi should not be subjected to a NAB inquiry due to Mr. Qasmi's advanced age and literary contributions and insisted that the offer of voluntarily returning these expenses incurred by PTV be accepted.

14. Before proceeding further, we find it expedient to discuss the roles of the Chairman and MD and the relevant law in this regard. According to Article 96. i) of the AoA, *"There shall be Chief Executive of the Company who shall be appointed in the manner provided in Section 196 and 199 of the Ordinance by the Board from amongst the Directors representing the Government of Pakistan. He may be styled as the Managing Director."* Section 2(6) of the Ordinance defines a Chief Executive as *"...an individual who, subject to the control and directions of the directors, is entrusted with the whole, or substantially the whole, of the powers of management of the affairs of the company, and includes a director or any other person occupying the position of a chief executive, by whatever name called, and whether under a contract of service or otherwise;"* As per Rule 4(3) of the Rules of 2013, *"The chief executive is responsible for the management of the Public Sector Company and for its procedures in financial and other matters, subject to the oversight and directions of the Board, in accordance with the Ordinance. His responsibilities include implementation of strategies and policies approved by the Board, making appropriate arrangements to ensure*

*that funds and resources are properly safeguarded and are used economically, efficiently and effectively and in accordance with all statutory obligations.”* Rule 4(1) of the Rules of 2013 provides that *“The office of the chairman shall be separate, and his responsibilities distinct, from those of the chief executive.”* Rule 4(2) thereof describes the role of the Chairman which is to *“(a) ensure that the Board is properly working and all matters relevant to the governance of the Public Sector Company are placed on the agenda of Board meetings; (b) conduct the Board meeting including fixing the agenda; and (c) ensure that all the directors are enabled and encouraged to fully participate in the deliberations and decisions of the Board. The chairman has a responsibility to lead the Board and ensure its effective functioning and continuous development, he shall not be involved in day to day operations of the Public Sector Company.”* Mr. Qasmi was appointed as a Director and the Chairman of PTV and not the MD. As is clear from the foregoing discussion the roles, duties and responsibilities of the Chairman and MD are distinct and separate and they are not to be conflated. Rule 4(2) of the Rules of 2013 categorically states that the Chairman is not to be involved in the day to day operations of the Public Sector Company which is the function of the MD as per Section 2(6) of the Ordinance and Rule 4(3) of the Rules of 2013.

15. With respect to remuneration, according to Section 191(2) of the Ordinance, *“The remuneration to be paid to any director for attending the meetings of the directors...shall not exceed the scale approved by the company or the directors, as the case may be, in accordance with the provisions of the articles.”* In this respect the AoA provide in Article 85 that *“Unless otherwise determined by the Company in General Meeting each Director (other than a Chief Executive and a full time working Director) shall be paid out of the funds of the Company by way of remuneration for his services, the amount to be determined by the Company or the Directors, for each meeting of the Directors attended by him.”* Article 86 of the AoA goes on to clarify that *“The remuneration of the Directors, shall from time to time be determined by the Company in its General Meeting, except those who are deputed to work on a whole time basis in which case the remuneration will be determined by the Board.”*

16. With respect to Directors performing extra services, including the holding of the office of Chairman, Section 191(1) of the Ordinance provides that their remuneration “...shall be determined by the directors or the company in general meeting in accordance with the provisions in the company's articles” (note:- the same statutory provision in verbatim is retained as Section 170 of the Companies Act, 2017). In this regard the AoA state in Article 87 that “Any Director appointed to any executive office including for the purpose of this Article the office of Chairman...or to devote special attention to the business of the Company or who otherwise perform extra services, which in the opinion of the Board are outside the scope of the ordinary duties of a Director, may be paid such extra remuneration by way of salary, fees, allowances or otherwise as shall from time to time be determined by the Directors.” ‘The Directors’ has been defined in Article 2. vi) of the AoA as “*the directors for the time being of the Company or as the case may be, the directors assembled as a Board*”, and ‘Board’ has been defined in Article 2. iii) thereof as “*a meeting of the directors duly called and constituted or as the case may be the directors assembled at a Board.*”

17. The foregoing indicates that the remuneration of Directors, other than a Chief Executive and a full time working Director, is to be determined by the Company in its General Meeting, whereas the remuneration of the Directors who are deputed to work on a whole time basis is to be determined by the Board. The remuneration of Directors who perform extra services including holding the office of Chairman is also to be decided by the Board. Therefore the remuneration of Mr. Qasmi, being a Director who also held the additional charge of Chairman, had to be determined by the Directors of PTV in a duly constituted Board meeting which is absent in the instant case. Instead, Mr. Qasmi’s remuneration (including his salary of Rs.1,500,000/- and certain benefits/allowances) was determined by MOIBNH in its summary for the PM dated 08.01.2016 signed by Ms. Saba Mohsin Raza, the then Acting Secretary MOIBNH, which was seen and approved by Mr. Pervaiz Rashid, the then Minister of Information. The said summary was subsequently approved by the Finance Division as is evident

from paragraph No.9 thereof signed on 26.02.2016 by Mr. Waqar Masood Khan, the then Finance Secretary, and thereafter was seen and approved by the PM through approval dated 28.02.2016 signed by Mr. Fawad Hasan Fawad, the then Secretary to the PM. Finally the terms and conditions of Mr. Qasmi as the Chairman of PTV were issued by MOIBNH on 29.02.2016. There was no determination of any sort by the Board of PTV in this regard. It should be noted that the minutes of the Board Resolution 2000 is available on the record which sanctions some entitlements of the Chairman, however, this does not include salary. The Board Resolution 2000 shall be discussed further below with respect to Mr. Qasmi's benefits/allowances.

18. While the arguments of Mr. Qasmi's counsel and the summaries moved for his appointment ring praises of his literary background, no justification has been provided for the special treatment he was afforded nor has it been explained as to why a Chairman was offered a salary package that is more generous than that of an MD whose duties and functions are of a managerial nature while the duties of the former are limited to overseeing the working of the Board (*as discussed above*). 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. Nonetheless, some of the officials involved in the process of Mr. Qasmi's appointment submitted that the post of Chairman is higher than that of

MD, and since the then MD was drawing a handsome salary/perks, therefore Mr. Qasmi was offered a monthly salary package of Rs.1,500,000/-. According to the Audit Report, Mr. Qasmi's total salary amount received during his tenure was Rs. 35,806,452/- and the tax paid by PTV in this regard was Rs.12,439,908/- resulting in a gross salary expense by PTV of Rs.48,246,360/-. Here it would be relevant to refer to Rule 17(2)(f) of the Rules of 2013 which provides that in the Board's annual report to the shareholders, a statement and the requisite information to the effect that *“the appointment of chairman and other members of Board and the terms of their appointment alongwith (sic) the remuneration policy adopted are in the best interests of the Public Sector Company as well as in line with the best practices.”* Furthermore according to Rule 17(3) of the Rules of 2013, *“The disclosure of an Executive's remuneration is an important aspect for a Public Sector Company. The annual report of a Public Sector Company shall contain a statement on the remuneration policy and details of the remuneration of members of the Board. Separate figures need to be shown for salary, fees, other benefits and other performance-related elements.”* Despite the fact that PTV has suffered colossal losses during the past seven years, Mr. Qasmi was awarded with a generous salary and exorbitant perks and privileges. This raises serious concerns as to whether the remuneration policy of the Chairman is *“in line with the best practices.”* Admittedly in the year 2008 the salary of Mr. Shahid Masood, the then Chairman of PTV, was Rs.850,000/- however it must be noted that he also had the additional charge of MD, PTV whose role and responsibilities are different and much more than that of a Chairman of PTV as mentioned earlier. Mr. Qasmi's salary of Rs.1,500,000/- was also far beyond the salary admissible to MP-I public office holders which, as per the Finance Division's Office Memorandum (OM) dated 24.12.2012 (in force at the time of Mr. Qasmi's appointment), could be a maximum of Rs.372,000/- (basic pay of Rs.240,000/-, house rent of Rs.105,000, utilities of Rs.12,000 and an increment of Rs.15,000/-).

19. Salary aside, Mr. Qasmi was also given certain benefits/allowances, the entitlement whereof is contained in two documents, the terms and conditions letter dated 29.03.2016 read with the Finance Division's Office Memorandum dated 24.12.2012 and the Board Resolution 2000 which is illustrated in the table below:-

Subject	Entitlement as per Mr. Qasmi's terms and conditions letter dated 29.03.2016	Finance Division's Office Memorandum dated 24.12.2012 ( <i>in force at the time of Mr. Qasmi's appointment</i> )	Board Resolution 2000
Leave	As admissible to MP-I public office holders.	The incumbent shall earn leave on full pay @ 3 days per month for the period of duty. The leave shall be availed during the currency of contract period. Title to leave shall expire on expiry of contract. If given a fresh contract, the period of earned leave available in respect of the previous contract shall not be carried forward.	-
Travelling allowance/Daily allowance	As admissible to MP-I public office holders.	As admissible to civil servants of the highest grade (domestic official tour). As admissible to civil servants in Cat-I (official duty abroad).	-
Medical	As admissible to MP-I public office holders.	Reimbursement of medical and hospitalization charges for self, spouse, and children for treatment received at Govt. or Govt. Recognized institutions in Pakistan.	No limit
Entertainment	As admissible to MP-I public office holders.	-	No limit
Chauffer driven car	-	Monetized value of transport facility for MP-I @ Rs.95,910/-	One
Petroleum, oil and lubricants (POL)	-	-	No limit
Air travel	-	-	Club class on official tours
Hotel stay	-	-	Paneled hotels on official tours
Mobile	-	-	No limit

telephone			
Two STD office telephones	-	-	No limit
One fax machine with telephone line	-	-	No limit
Computer with printer	-	-	One
Office stationery	-	-	No limit
Newspaper and magazines	-	-	No limit
Refrigerator	-	-	One

20. A brief summary of the expenses incurred by or on behalf of Mr. Qasmi as determined by the Auditors is reproduced below:-

Description	Expense as determined by the Auditor	Breakdown	Learned counsel for Mr. Qasmi's arguments
Travel (domestic and international)	Rs.1,437,501/-	TA/DA, self-approved daily allowances of Rs.301,753/- and travel expenses of Rs.215,727/- to Lahore ( <i>also his place of residence</i> ) on or near weekends, expenses from his stay at Ramada Hotel after he assumed the office of Chairman costing Rs.284,753/- and international travel to Belarus costing Rs.400,510/- to attend a book exhibition.	These expenses were not paid to Mr. Qasmi directly but to the travel agents etc. Mr. Qasmi was only a beneficiary thus he is not entitled to return them.
Medical expenses	Rs.355,278/-	Medicines purchased (Rs.56,999/-) and hospital facilities (Rs.2,550/-) availed from non-paneled chemists and hospitals.	Incurred as per the notification of the Finance Division.
Entertainment expenses	Rs.2,359,602/-	Includes Islamabad Club membership of Rs.1,543,153/-.	The Islamabad Club membership and subscription fee was approved by the then MD. The other entertainment expenses are covered by the Board Resolution 2000.
Vehicle running	Rs.1,998,913/-	Official vehicle	Mr. Qasmi was entitled to the

and maintenance expense		(Honda Civic Vti Oriel, SJ-332) – Rs.787,743/-. Official vehicle (Toyota Corolla Altis, JV-515) – Rs.430,578. Personal vehicle (Mercedes E-200, LEA 332) – Rs.780,592/-.	chauffer driven car as per the Board Resolution 2000. As far as the second car is concerned, he has refunded the amount to PTV. With regard to the expenses incurred by PTV on account of the maintenance and fuel of the personal vehicle, she admits he had no entitlement thus Mr. Qasmi is willing to return such amount.
Telephone/mobile expense	Rs.569,366/-	Includes expenses incurred at Mr. Qasmi's Islamabad office (Rs.123,789/-), residence at the guest house (Rs.22,000/-), and mobile phone (Rs.423,577/-).	He was entitled to these according to the notification of the Finance Division and the Board Resolution 2000.
Refreshment/food expenses (Lahore office)	Rs.207,252/-	-	This food was not for Mr. Qasmi's consumption alone, but the entire office.
Guest house expenses (Shalimar Recording and Broadcasting Corporation Limited "SRBC")	Rs.2,104,000/-	Includes room rent (Rs.1,460,000/-), salary of cook (Rs.600,000/-), and purchase of items (Rs.44,000/-).	Private matter between Mr. Qasmi and SRBC as the expenses were charged to him directly. She states he would be willing to pay the room rent. However the cook is SRBC's employee thus Mr. Qasmi is not liable to pay for the same nor the other expenses incurred.
Newspapers and periodicals	Rs.62,734/-	-	
Chairman's office renovation expenses	Rs.2,486,228/-	Office renovation (Rs.1,082,440/-) and purchase of equipment (Rs.1,403,788/-).	He did not authorize nor was a signatory to the renovations etc. It was authorized by the MD. The equipment and goods have been bought by PTV and subsequently retained by PTV, Mr. Qasmi has not kept the things with him for his personal benefit.
Chairman's camp office's expenses	Rs.1,356,795/-	This includes: renovation of office – Lahore (Rs.754,276/-), furniture (Rs.225,810/-), two ACs, 3 LEDs, window blinds (Rs.270,498/-), Smart TV internet (Rs.30,460/-), vehicle	Mr. Qasmi only used it when he went to Lahore. These are normal expenses incurred in the normal course by PTV for improving their own property and for the benefit of PTV and the GM in particular.



		hiring expenses (Rs.22,770/-) and telephone expenses (Rs.52,981/-).	
Program expenses (“Khoye hu’unn ki Justaju”)	Rs.59,326,257/-	Transmission costs (Rs.51,648,873/-), program host salary (Rs.3,157,161/-), talent fee (Rs.2,456,750/-), program parties, design and props (Rs.960,440/-), travelling (Rs.773,204/-), hiring of technical facilities (Rs.63,000/-), vehicles hiring (Rs.69,526/-), guest entertainment (Rs.33,960/-), and staff food and mobile (Rs.163,343/-).	PTV did not charge for any transmission costs, they are not remotely related to Mr. Qasmi. As a host of a programme has got nothing to do with transmission costs nor is he liable for them. The figure of transmission costs is arbitrary and made up by the auditors. The actual costs are the remaining which were incurred on account of the production of the programme, not one penny of it went to Mr. Qasmi even though he was the host, therefore he is not liable to pay for the same.
Press advertisement expenses	Rs.55,104,720/-	-	No money was actually incurred by PTV, this was under a barter arrangement. It is a notional expense, and in any event, if Mr. Qasmi is one of the co-hosts of a programme which is produced by PTV, this is not to the direct benefit of Mr. Qasmi and he is not liable for such amount.
Program promos	Rs.23,768,685/-	These are the normal transmission costs.	Not remotely related to Mr. Qasmi and he has got nothing to do with such costs or be liable for them. The figure is an arbitrary number made up by the auditors.
Ramadan transmission – Chairman’s promos – transmission costs	Rs.551,700/-		
Payment to Mr. Yasir Pirzada	Rs.480,000/-		
Fees paid to writers	Rs.31,770/-		
Hotel expenses	Rs.29,855/-		
Writers’ conference expenses	Rs.61,625/-		
Administrative decisions of Mr. Qasmi	-		In the absence of an MD for such a long period of time, Mr. Qasmi was <i>de facto</i> MD

			and hence these were justified.
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21. As mentioned earlier, remuneration (*salary and benefits/allowances*) of a Director also performing the functions of a Chairman has to be determined by the Board. Therefore the salary and other benefits/allowances given to Mr. Qasmi *vide* MOIBNH's letter dated 29.03.2016 read with the Finance Division's OM dated 24.12.2012 were inadmissible and illegal as there was no Board resolution to this effect. In this regard, repeated reliance has been placed on the Board Resolution 2000 in Mr. Qasmi's defense, however, considering the spirit of the Rules of 2013, particularly Rules 17(2)(f) and 17(3) thereof, we find that the unlimited benefits/allowances granted to the office of the Chairman of PTV is not in line with the policy of the 'best interests of the Public Sector Company.' Furthermore, Rule 5(7)(o) of the Rules of 2013 specifically provides that "*The Board shall also formulate significant policies of the Public Sector Company, which may include...capital expenditure planning and control.*" Moreover, Rule 5(5)(a) and (b) provide that:-

(5) *The Board shall establish a system of sound internal control, which shall be effectively implemented at all levels within the Public Sector Company, to ensure compliance with the fundamental principles of probity and propriety; objectivity, integrity and honesty and relationship with the stakeholders, in the following manner, namely:-*

(a) *the principle of probity and propriety entails that company's assets and resources are not used for private advantage and due economy is exercised so as to reduce wastage. The principle shall be adhered to, especially with respect to the following, namely:-*

(i) *handling of public funds, assets, resources and confidential information by directors, executives and employees; and*

(ii) *claiming of expenses;*

(b) *the principle of objectivity, integrity and honesty requires the following, namely:-*

(i) *the directors and executives of a Public Sector Company do not allow a conflict of interest to undermine their objectivity in any of their activities, both professional and private and that they do not use their position in the Public Sector Company to further their private gains in a social or business relationship outside the Public Sector Company. If a situation arise where an actual or potential conflict of interest exists, there shall be appropriate identification, disclosure and management of such conflict of interest;*

(ii) *An appropriate conflict of interest policy is developed and duly enforced. Such a policy shall clearly lay down circumstances or considerations when a person may be deemed to have actual or potential conflict of interest, and the procedure for disclosing such interest:*

*Explanation: For the purposes of this clause a person shall be deemed to have an interest in a matter if he has any stake, pecuniary or otherwise, in such matter which could reasonably be regarded as giving rise to a conflict between his duty to objectively perform his functions under these rules so that his ability to consider and decide any matter impartially or to give any advice without bias, may reasonably be regarded as impaired;*

(iii) *where a director, executive or other employee has a conflict of interest in a particular matter, such person shall play no part in the relevant discussion, decision or action;*

(iv) *A “register of interests” is maintained to record all relevant personal, financial and business interests, of directors and executives who have any decision making role in the company, and the same shall be made publicly available. Such interests may include, for instance, any significant political activity, including office holding, elected positions, public appearances and candidature for election, undertaken in the last five years;*

(v) *a declaration by the directors and executives that they shall not offer or accept any payment, bribe, favor or*

- inducement which might influence, or appear to influence, their decisions and actions; and*
- (vi) *the Board shall also develop and implement a policy on “anticorruption” to minimize actual or perceived corruption in the company.*

22. Even a cursory perusal of the above reveals that the Board Resolution 2000 allowing unlimited expenditure for certain benefits/allowances of the Chairman of PTV is not in line with the principles of probity and propriety, objectivity, integrity, honesty and due economy in the claim of expenses, as mentioned above. Further, Mr. Qasmi's actions, as evidenced in the Audit Report, were not in consonance with the aforementioned principles contained in the Rules of 2013, as he failed to lead by example to ensure that these principles were promoted, rather he himself acted contrary to PTV's interest. While Article 87 of the AoA permits the Board to determine the remuneration for any extra services performed by a Director including holding the office of Chairman, we do not think that the Board can sanction excessive remuneration by way of various benefits/allowances while keeping in mind the spirit of the Rules of 2013. It is incomprehensible as to why such excessive benefits/allowances as mentioned in the Board Resolution 2000 (*see the table in paragraph 19 above*) such as office entertainment and entertainment of guests outside office etc. is required for the 'smooth running' of the company. More importantly when the Rules of 2013 were enacted, the policies and inner workings of all Public Sector Companies including PTV had to be brought in line with the Rules of 2013 as per Rule 24 thereof and any contravention of the said Rules can potentially result in imposition of penalties under Rule 25. Thus, the Board Resolution 2000 should have either been amended or completely discarded unless the approved expenses could be justified in terms of how they were necessary in light of the performance of duties of Mr. Qasmi as the Chairman of PTV.

23. As mentioned earlier, the Rules of 2013 set out the specific role of the Chairman and to our mind none of these duties requires excessive entertainment, petrol and telephone expenses or international travel, etc. Being a public document, the Chairman of PTV is expected to have been aware of the Rules of 2013 enacted specifically to regulate Public Sector Companies. He should have played an instrumental role in implementing rather than flouting the said Rules. Therefore in light of the foregoing, we hold that the payment of salary and the benefits/allowances to Mr. Qasmi was unlawful and unauthorized under the Rules of 2013 and the AoA. He was not entitled to such payments and cannot retain the same.

24. It is crucial to note that the post of a Director (*and therefore Chairman of the Board*) of a company and for that matter a Public Sector Company is fiduciary in nature [*note:- for the purposes of the discussion in this paragraph, reference is made both to the Ordinance and the Companies Act, 2017 (the Act) since both of these applied at various times during Mr. Qasmi's tenure*]. As per Section 217 of the Ordinance (*Section 212 of the Act*) a Director may be declared to be lacking fiduciary behavior if he contravenes the provisions of *inter alia* Section 214 of the Ordinance (*Section 205 of the Act*) which states that “*Every director of a company who is in any way, whether directly or indirectly, concerned or interested in any contract or arrangement entered into, or to be entered into, by or on behalf of the company shall disclose the nature of his concern or interest at a meeting of the directors.*” Regardless of the fact that Mr. Qasmi did not receive any monetary benefit in terms of payments for the programme ‘*Khoye Hu’uun ki Justuju*’, we find that being a host thereof (*while he was a Director and the Chairman of PTV*) he was benefiting from the same and had a personal interest in airing of the program. Therefore he was liable to disclose the same to the Board. According to the Audit Report, the said programme did not go through PTV’s standard practice for approval of production of programmes and there is no board resolution approving the same. We are of the view that pushing for the development and promotion of this programme renders Mr.

Qasmi guilty of self-promotion and personal aggrandizement by utilizing public money. Furthermore, regarding the matters of the hiring of Mr. Qasmi's son, Mr. Yasir Pirzada, as a scriptwriter for the drama 'Dhund' at Rs.80,000/- per episode, using two instead of one official car and getting maintenance and running allowances for a third personal car, using PTV funds to pay the membership and subscription fees of Islamabad Club, incurring exorbitant expenses for renovation of various officers and for entertainment of guests inside and outside the office, and using public funds to attend a book exhibition completely unrelated to his duties as a Director and Chairman of PTV, we find that Mr. Qasmi breached his fiduciary duties. He failed to *“act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company,”* [Section 204(2) of the Act] to *“discharge his duties with due and reasonable care, skill and diligence”* and *“exercise independent judgment,”* [Section 204(3) of the Act] and he put himself *“in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company”* [Section 204(4) of the Act]. Furthermore, we find him guilty of *“achiev[ing] or attempt[ing] to achieve... undue gain or advantage either to himself or to his relatives, partners, or associates.”* Therefore in accordance with Section 204(5) of the Act, Mr. Qasmi is *“liable to pay an amount equal to that gain to the company.”* Being fully aware of the miserable and weak financial situation of PTV, and of his duties as a Director and the Chairman under the Rules of 2013, the Ordinance and the Act, he miserably failed to act in the interest of PTV. He grossly, intentionally and deliberately misused its funds for the purposes of self-projection and self-enrichment. In light of the above, we are inclined to declare, under Section 217 of the Ordinance (*Section 212 of the Act*), Mr. Qasmi to be lacking fiduciary behavior. Consequently, from the date of this judgment onwards he is declared to be ineligible to be appointed as a Director of any company as per Section 187(g) of the Ordinance [*Section 153(g) of the Act*].

25. As an ancillary matter, the Audit Report also discusses the administrative actions taken by Mr. Qasmi. Suffice it to say that we are of the view that such actions are beyond the scope of duties of a Chairman as provided in the Rules of 2013. Therefore all such orders passed by Mr. Qasmi during his tenure are declared to be illegal and void *ab initio*.

**iii. If the answers to questions No.i and ii are in the negative, who is to be held responsible for such illegal appointment and/or expenditure?**

26. Concise statements were filed by Sardar Ahmad Nawaz Sukhera, Secretary Information and Broadcasting Division, Ms. Saba Mohsin Raza, Additional Secretary (R) MOIBNH, Mr. Nasir Jamal, Officer on Special Duty/Ex-Director General (IP) MOIBNH, Mr. Pervaiz Rashid, former Minister for Information, Mr. Fawad Hasan Fawad, former Secretary to the PM, Mr. Nadeem Hassan Asif, former Secretary Establishment Division and Dr. Waqar Masood Khan, former Finance Secretary. Their basic and common plea was that Mr. Qasmi's appointment and terms and conditions were made in accordance with the relevant law and rules.

27. We have noted that the approvals from the PM's office as reproduced above were all issued and signed by Mr. Fawad Hasan Fawad. During the hearing on 26.02.2018 when he was asked to produce the file where the then PM had himself approved the summaries, Mr. Fawad stated that as a matter of practice, a file was placed before the PM who verbally issued an order and this has been the past practice in the PM's office for the last 10 to 15 years. When asked to cite some rule or regulation supporting such practice, Mr. Fawad frankly conceded that there was no such rule in the Rules of Business, 1973 (*the Rules of Business*) which envisaged that verbal approval of the PM could be taken and conveyed and notified by his Secretary. He also conceded that in this particular case, the PM never made any noting on the file. Subsequently on 03.07.2018, Mr. Fawad came forth to state that Rule 5(11A) of the Rules of Business was now being

implemented in letter and spirit and written approval of the PM was being sought with his signature. The said rule is reproduced herein below:-

**5. Transaction of Business.-** (11A) *Verbal orders given by a functionary of the Government should as a matter of routine be reduced to writing and submitted to the issuing authority. If time permits, the confirmation shall invariably be taken before initiating action. However, in an exigency where action is required to be taken immediately or it is not possible to obtain written confirmation of the orders before initiating action, the functionary to whom the verbal orders are given shall take the action required and at the first available opportunity obtain the requisite confirmation while submitting to the issuing authority a report of the action taken by him.*

According to him, in 99% of the cases it is done immediately after issuance of the approval/order, and in the rest of the cases it is done either next morning or as soon thereafter as possible. He concedes that the past practice was a lapse and requested the Court to condone the same. Coming to the facts of the instant matter, Mr. Fawad stated that the PM's approval was only to the extent of Director and not for direct appointment as Chairman. Nevertheless he admitted that the proper process was not followed. He further stated that the remuneration of Mr. Qasmi was the business of the Finance Division, which was done by Dr. Waqar Masood Khan, former Finance Secretary with the approval of Mr. Ishaq Dar, the then Finance Minister, and that the perks and privileges was a matter for the Board of PTV to decide. He categorically stated that at no stage was Mr. Qasmi's appointment as an MD approved by the PM and there was no such proposal before him.

28. Learned counsel for Mr. Pervaiz Rashid, the then Minister of Information submitted that there were two instances where his client had a role in the instant matter: (i) summary dated 30.04.2015 for Mr. Qasmi's appointment as a Director and the Chairman of PTV; and (ii) summary of Mr. Qasmi's terms of appointment fixing his salary, both of which (*summaries*)



were approved by Mr. Rashid. When confronted, Mr. Rashid stated that his department assisted him in the matter of preparation of the summary for Mr. Qasmi's appointment. Thereafter, the matter was sent to the Establishment Division which never returned the summary to him in case they had any problem with it. With respect to Mr. Qasmi's terms and conditions of service, the learned counsel argued that while such summary was routed through the Finance Division, the ultimate approval was given by the PM. With regard to the issue of the unlimited expenses, learned counsel argued that it was for the Board of Directors of PTV to explain as it fell within their domain. He made reference to Article 37 of the Memorandum of Association (*MOA*). As regards the issue of salary, he stated that the previous four Chairmen of PTV also drew salaries therefore it was a past practice which was followed. He further stated that he sought guidance from the Finance Division with respect to Mr. Qasmi's terms and conditions, and the said Division did not advise against offer the said terms and conditions to Mr. Qasmi.

29. According to the concise statement filed by Dr. Waqar Masood Khan, the former Finance Secretary, the summary dated 08.01.2016 for Mr. Qasmi's terms and conditions was examined by the Regulation Wing of the Finance Division. It (*Wing*) moved a note dated 13.01.2016 which did not support the proposal (*salary package of Rs.1.5 million and other facilities as per MP-I*). It suggested that the referring Ministry be asked to revise the package in conformity with the salary of MP-Scales/Management Grade. Alternatively, they also suggested that the proposal may be endorsed. Thereafter the concerned Additional Secretary, while submitting the case to the Finance Secretary, recommended endorsement of MOIBNH's proposal based on past precedents. The Finance Secretary on 18.01.2016 asked for further examination of the case in light of the role and responsibilities of the Chairman of PTV. The Regulation Wing then concluded in a note dated 27.01.2016 that the proposed salary package was not warranted and a

salary package of MP-1 be recommended. A draft endorsement along the recommended lines was prepared and submitted to the Finance Secretary on 29.01.2016. He sent the note to the Finance Minister, Mr. Ishaq Dar on 30.01.2016. A noting dated 08.02.2016 on the draft endorsement stated that *“FM has handed over a photocopy to Honorable PM on 8-2-2016. The PM Office would get back to us.”* According to the Finance Secretary it was later conveyed that MOIBNH's proposal should be supported by the Finance Division. Accordingly the Regulation Wing prepared a revised note dated 25.02.2016 along with a revised draft endorsement that supported MOIBNH's proposal. On 25.02.2016 the Finance Secretary sent the endorsement for the perusal of the Finance Minister, Mr. Ishaq Dar who then returned the file on 26.02.2016 noting that the Finance Minister had seen it. Thereafter the endorsement was signed and sent to the PM the same day.

30. The discussion throughout this opinion raises serious questions about the ethical and professional responsibility of the officials involved in the appointment of Mr. Qasmi and fixation of his terms and conditions of service, etc. when they should have been fully conversant with the relevant provisions of the Ordinance (*and the Act*), the Rules of 2013, the AoA and the Esta Code. The alarming negligence of the government officials which they tried to justify by stating that they were merely following orders from superiors/political heads, shows their utter lack of ability to withstand pressure and influence from higher officers or political bosses. Furthermore, it is evident that each official was trying to shift responsibility from himself onto the other Ministry(ies)/Division(s). This exercise of shirking responsibility and ignoring the rules has resulted in colossal loss of millions of rupees to the public exchequer and PTV. At this stage, it is pertinent to mention that public officials, particularly heads of Ministries who are elected representatives of the people of Pakistan, owe their first and foremost allegiance and loyalty to Pakistan, the Constitution and the law. Thus, they are obligated to act in accordance therewith, without being

influenced by any extraneous considerations. Such officials are not allowed to take decisions and push for relaxations and summaries arbitrarily which bypass or circumvent the law and the rules and at their own whims and caprices in order to please certain individuals. Government officials are duty bound to discharge their functions independently and are not to be influenced by dictatorial misuse of powers and/or dictated exercise of discretion.<sup>7</sup> In our view the instant matter is a clear cut case of dictated exercise of direction. At the cost of repetition, *"it is now a well-settled principle of law that all public functionaries must exercise public authority, especially while dealing with the public property, public funds or assets in a fair, just, transparent and reasonable manner, untainted by mala fide without discrimination and in accordance with law, keeping in view the Constitutional Rights of the Citizens."*<sup>8</sup> Therefore, we find the following officials responsible for the illegal appointment of Mr. Qasmi and the illegal fixation of his terms and conditions.

31. Mr. Pervaiz Rashid, as the Minister for Information, was responsible for the following: (i) the summary dated 23.09.2015 for exemption from the upper-age limit as it was proposed in paragraph 4 that the upper age limit be relaxed for the heads of *inter alia* PTV. Upon a clarification sought by Mr. Javaid Aslam, Secretary to the PM, on 29.09.2015 with respect to the said summary, it was stated in paragraph 7(c) of the clarification letter dated 05.10.2015 issued by MOIBNH that the posts of the heads of autonomous bodies of *inter alia* PTV require people of higher learning and achievements which can only be achieved after the age of 65. This to our understanding is not at all a satisfactory or plausible justification; (ii) the summary dated 30.10.2015 for the appointment of Mr. Qasmi as the Chairman of PTV in which it was stated in paragraph No.4(a) that *"Mr. Atta ul Haq Qasmi who is an eminent literary personality with nationwide*

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<sup>7</sup> See further the judgments of this Court reported as **Province of Punjab Vs. Azhar Abbas (2002 SCMR 1), Samiullah Khan Marwat Vs. Government of Pakistan (2003 SCMR 1140), Syed Nazar Abbas Jafri Vs. Secretary to the Government of the Punjab and another (2006 SCMR 606), Human Rights Cases Nos. 4668 of 2006, 1111 of 2007 and 15283-G of 2010 (PLD 2010 SC 759), Syed Mahmood Akhtar Naqvi and others Vs. Federation of Pakistan and others (PLD 2013 SC 195).**

<sup>8</sup> **Habibullah Energy Limited** (*supra*).

*recognition in the disciplines of poetry, drama, literature and media (CV at Annex-5) may be appointed as Director of the Company for a period of three years and also act as Chairman of PTVC.”; (iii) the summary dated 08.01.2016 for the terms and conditions of Mr. Qasmi in which it was incorrectly stated in paragraph No.3 that appointment to the post of Chairman did not warrant advertisement in terms of SI. No.141 of the Esta Code as appointment had been made under Section 183(b) of the Ordinance read with the AoA (Article 95) and MoA; it was also proposed in paragraph No.6 that Mr. Qasmi's salary has been worked out to be “Rs. 15,00,000/- (net of taxes) per month, which approximately is slightly higher than what Mr. Muhammad Malick MD – PTV is currently being paid (Rs. 13,80,000/- per month : net of taxes).” The arguments put forward by Mr. Rashid and his learned counsel were evasive whereby the brunt was being passed onto the former PM, and the Finance and Establishment Divisions. We do not believe that the MOIBNH had no role to play and that it was only acting as a conduit through which Mr. Qasmi's appointment as well as terms and conditions of service were merely routed. We find that Mr. Rashid, as the Minister for Information, under which the business of PTV falls, was the most relevant person to make a decision regarding the candidate for the proposed post and the salary package (including benefits/allowances). It was his Ministry that thought it appropriate to seek relaxation of the upper-age limit for appointment to autonomous bodies. All three summaries were issued by MOIBNH. He had seen and approved both the summaries for appointment and fixation of terms and conditions of Mr. Qasmi. Being the head of MOIBNH, Mr. Rashid was responsible for the all of the above. He cannot be absolved of responsibility for his acts and omissions which were deliberate, intentional and consciously done and committed the responsibility and liability for which clearly falls on Mr. Rashid.*

32. The role of Mr. Ishaq Dar, the Finance Minister, in the assessment and calculation of the salary package of Mr. Qasmi as outlined

above in paragraph No.29 is motivated. Due to his involvement in the instant matter, it was deemed appropriate to provide him an opportunity to justify his position. To that end notices were issued to him *vide* order dated 3.7.2018 after which he was given various opportunities to appear before this Court *vide* orders dated 9.7.2018 and 12.07.2018. However, he failed to do so despite repeated notices, which were not only affixed at his residence but also published in the print and electronic media. We have reason to believe that he had knowledge of the notices sent and *suo motu* proceedings pending before this Court. He nevertheless chose to stay away and did not even appoint a counsel to represent him. We are therefore justified in presuming that he has nothing to say in his defence. We accordingly hold him along with the others responsible for the illegal fixation of the terms and conditions of service of Mr. Qasmi as the Chairman of PTV.

33. As mentioned above, Mr. Fawad Hasan Fawad, Secretary to the PM, conceded that the past practice of seeking verbal approval of the PM was a lapse. He also admitted that the proper process for the appointment of Mr. Qasmi was not followed. Being a senior civil servant and the Secretary to the PM, it is reasonably expected of him to know the relevant law including the Esta Code, particularly that regarding the appointment to posts in autonomous bodies etc. for which the PM is the appointing authority. He should have raised an issue with or sought further clarification of the summary dated 30.10.2015 recommending only one person, i.e. Mr. Qasmi, as opposed to a panel of three names for the consideration of and appointment by the PM, and returned the same (*summary*) to the Establishment Division. Therefore we find that Mr. Fawad failed in his duty, as a civil servant, to act responsibly and with due diligence as he did not question the summary(ies) placed before the PM and instead went ahead and sought approval as a matter of routine.

34. The illegal and exorbitant salary paid to and expenses incurred by or on behalf of Mr. Qasmi burdening PTV cannot be left unaccounted for. In the case reported as **Mehmood Akhtar Naqvi Vs. Federation of Pakistan (PLD 2012 SC 1054)** this Court directed for the recovery of the salary along with perks and other emoluments paid to the members of Parliament who were declared to be disqualified:-

*“(e) The members of Parliament/Provincial Assemblies noted hereinabove, being disqualified persons are directed to refund all monetary benefits drawn by them for the period during which they occupied the public office and had drawn their emoluments etc. from the public exchequer including monthly remunerations, TA/DA, facilities of accommodation along with other perks which shall be calculated in terms of money by the Secretaries of the Senate, National Assembly and Provincial Assemblies accordingly.”*

A similar direction was issued in the case of **Sher Alam Khan Vs. Abdul Munim and others (PLD 2018 SC 449)**, as under:-

*“34. Consequently, it is held that Respondent No.1 was not qualified to be and disqualified from being a Member of the Provincial Assembly of Khyber Pakhtunkhwa at all material times, hence, was liable to be de-notified as such by the ECP. Furthermore, he was obliged to return all the benefits i.e. salary and other allowances received by him as a Member of the Provincial Assembly and also criminal proceedings as provided under the law are also directed to be taken against him...”*

35. According to our calculations illustrated below, a total amount of Rs.197,867,491/- is liable to be recovered being the loss caused to PTV:-

Gross salary expense by PTV (+)		Rs.48,246,360/-
Total expenses incurred other than salary ( <i>sum of column two of the table in paragraph No.20</i> ) (+)		Rs.152,292,301/-
Expenses Mr. Qasmi willing to	Vehicle running and maintenance expense [ <i>second official vehicle (Toyota Corolla</i>	Rs.430,578/- Rs.780,592/-

return or already returned (-)	<i>Altis, JV-515) and personal vehicle (Mercedes E-200, LEA 332)]</i>	
	SRBC room rent expenses	Rs.1,460,000/-
<b>Total</b>		<b>Rs.197,867,491/-</b>

In light of the foregoing discussion and taking into account the lapses and illegal actions committed by Mr. Qasmi as a Director and the Chairman of PTV and by the officials identified above, we hereby direct that the aforementioned amount be recovered from the named persons in the ratio stated below:-

Name	Reason for liability	Ratio
Mr. Ata ul Haq Qasmi	Beneficiary of illegal acts	50%
Mr. Pervaiz Rashid, Minister for Information	Ignored the law and disregarded their duty to confer benefit on Mr. Qasmi	20%
Mr. Ishaq Dar, Finance Minister		20%
Mr. Fawad Hasan Fawad, Secretary to the PM	Failure to act with due diligence in processing the summary for appointment of the Director of PTV from a person-specific recommendation as opposed to a panel of three names as required by the Esta Code	10%

These amounts are their liabilities and they must reimburse the same to PTV. We give them an opportunity to do so voluntarily. However if they fail to do so within a period of two months, PTV is directed to recover the said amounts from them in the stated ratio as per the procedure in practice for the recovery of dues.

36. As far as the issue regarding delay in the appointment of the MD of PTV is concerned, from which the matter of Mr. Qasmi's appointment as Director and Chairman of PTV and the huge expenses incurred by or on his behalf emanated, we direct the Federal Government to look into the issue of the appointment of a full-time MD of PTV (*if the position is still vacant*) after fulfilling all legal, procedural and codal formalities, strictly in accordance with law. A report in this regard shall be submitted within two weeks of the issuance of this order.

37. To recapitulate:-
- i. Mr. Qasmi's appointment as a Director and the Chairman of PTV is declared to be illegal and without any lawful effect;
  - ii. The payment of salary and the benefits/allowances to Mr. Qasmi was unlawful and unauthorized. He was not entitled to such payments and cannot retain the same;
  - iii. On account of lack of fiduciary behavior, Mr. Qasmi is declared to be ineligible to be appointed as a Director of any company from the date of this judgment onwards;
  - iv. The administrative actions taken by Mr. Qasmi are beyond the scope of duties of a Chairman, therefore all such orders passed by him during his tenure are declared to be illegal and void *ab initio*;
  - v. Taking into account the lapses and illegal actions committed by Mr. Qasmi as a Director and the Chairman of PTV, Mr. Pervaiz Rashid, Minister for Information, Mr. Ishaq Dar, Finance Minister and Mr. Fawad Hasan Fawad, Secretary to the PM, we hereby direct that the amount of Rs.197,867,491/- be recovered from them in the ratio stated in paragraph No.35 of this opinion; and
  - vi. The Federal Government is directed to appoint a full-time MD of PTV (*if the position is still vacant*) after fulfilling all legal, procedural and codal formalities, strictly in accordance with law.

This matter is disposed of in the aforementioned terms.

CHIEF JUSTICE

JUDGE

JUDGE

**Announced in open Court**

on **8.11.2018** at **Islamabad**

Approved for Reporting

M. Azhar Malik