

Stereo.HCJDA 38.
Judgment Sheet
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

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WRIT PETITION NO.3383 of 2022

M/s INDEPENDENT NEWSPAPERS CORPORATION (PVT.)
LIMITED Through its authorized attorney, a private limited company
and publisher of urdu newspaper 'Daily Jang'

Versus

PROVINCE OF PUNJAB Through Director General-Directorate
General of Labour Welfare, Labour & Human Resource Department,
Government of Punjab and 2 others

JUDGMENT

Date of hearing:	<u>10.04.2023</u>
Petitioner by:	Mr. Muhammad Mehmood Ali, Advocate.
Respondents No.1 & 2 by:	Malik Amjad Ali, Additional Advocate General for Punjab.
Respondent No.3 by:	Mr. Muhammad Arif Khawaja, Advocate.

MIRZA VIQAS RAUF, J. The petitioner herein is a private limited company registered under the Companies Act, 2017 dealing with the business of publishing newspapers most commonly known as "Daily Jang", "Weekly Akhbar-e-Jehan" etc. As per claim of the petitioner-company, it is a trans-provincial establishment having its place of businesses at Karachi, Lahore, Rawalpindi, Quetta, Multan and London and as such matter relating to formation of trade unions and federations or trade unions, determining the collective bargaining agents, regulation of relations between employers and workers, the avoidance and settlement of any differences or disputes arising

between them or matters connected therewith and ancillary thereto are to be dealt with under the Industrial Relations Act, 2012 (hereinafter referred to as “Act, 2012”). Furthermore the disputes between the company and its employees are to be adjudicated by the National Industrial Relations Commission (hereinafter referred to as “N.I.R.C.”) under the Act *ibid*. The grievance of the petitioner-company canvassed herein is that respondent No.3 is a trade union in the establishment of the petitioner-company which has been got registered by its members under the Punjab Industrial Relations Act, 2010 (hereinafter referred to as “Act, 2010”) with Registrar Trade Unions, Rawalpindi (respondent No.2) by submitting false documents and information. On attaining the knowledge about registration of respondent No.3 with respondent No.2, the petitioner moved an application to respondent No.2 for revocation of certificate of registration of respondent No.3, however, it was rejected summarily by way of order dated 22nd August, 2022, which is now impugned in the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. This petition was admitted for regular hearing vide order dated 23rd November, 2022 in response to which the respondents submitted their respective written statements. The stance of respondents No.1 & 2 in their written statement is that a local trade union namely “Daily Jang & Press Workers Union, Rawalpindi” is already registered with them since 05th March, 1983 and since then they have not received any objections from the petitioner to this effect. The petition has mainly been resisted by respondent No.3 on the ground that the trade union was registered after fulfillment of all the codal formalities. It is also one of the grounds of resistance that there is already a trade union which exists in the petitioner establishment and registered by the Registrar of trade union with the name “Daily Jang and Press Workers Union Rawalpindi” which has never been challenged by the petitioner-company and as such it is now precluded to challenge the registration of respondent No.3.

3. Arguments have been addressed by learned counsel for the petitioner and respondent No.3 as well as learned Law Officer at considerable length. In the light of respective submissions, I have perused the record.

4. The status of the petitioner-company being trans-provincial establishment is not disputed seriously by any of the respondents. In this backdrop the moot point which requires determination of this Court is as to ***“what is the forum and the law for registration of trade union in case of trans-provincial establishment?”***.

5. “Act, 2012” was promulgated on 14th March, 2012 to consolidate and rationalize the law in Islamabad Capital Territory and at trans-provincial level, relating to formation of trade unions and federations or trade unions, determining the collective bargaining agents, regulation of relations between employers and workers, the avoidance and settlement of any differences or disputes arising between them or matters connected therewith and ancillary thereto. It was made applicable to all persons employed in any establishment or industry, in the Islamabad Capital Territory or carrying on business in more than one province. The term “establishment” is defined in Section 2(x) of the “Act, 2012” in the following manner :-

“(x) “establishment” means any office, firm, factory, society, undertaking, company, shop or enterprise, which employs workmen directly or through a contractor for the purpose of carrying on any business or industry and includes all its departments and branches in the Islamabad Capital Territory or falling in more than one province, whether situated in the same place or in different places and except in Section 62 includes a collective bargaining unit, if any, constituted by any establishment or group of establishments;”

Whereas sub-section (xxxii) of Section 2 of the “Act, 2012” provides the definition of “trans-provincial” in the following manner :-

“(xxxii) “trans-provincial” means any establishment, group of establishments, industry, having its branches in more than one province;”

There thus remains no cavil that the petitioner-company is a trans-provincial establishment, so in this eventuality “Act, 2012” would come into play.

6. Chapter-II of the Act *ibid* provides the manner of registration of trade unions. Section 2(vi) of the “Act, 2012” provides the definition of “Commission” in the following manner :-

“(vi) “Commission” means the Industrial Relations Commission constituted under Section 53;”

Section 53 of the “Act, 2012” deals with the composition of “N.I.R.C.” whereas Section 54 of the Act *ibid* lays down its numerous functions amongst which the registration of trade union is also one of the pivotal functions of the same. For ready reference and convenience, Section 54 of the “Act, 2012” is reproduced below :-

“54. Functions of the Commission.—The following shall be the functions of the Commission, namely—

- (a) to adjudicate and determine an industrial dispute in the Islamabad Capital Territory and trans-provincial to which a trade union or a federation of such trade unions is a party and which is not confined to matters of purely local nature and any other industrial dispute which is, in the opinion of the Government, of national importance and is referred to it by that Government;
- (b) to register trade unions and industry-wise trade unions of an establishment or group of establishments in the Islamabad Capital Territory and trans-provincial, and federations of such trade unions;

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;

From sub clause (b) it clearly manifests that in case of trans-provincial establishment the trade union shall be registered by the “N.I.R.C.”. Contrary to the above, respondent No.3 was registered by respondent No.2 while invoking Section 9 of the “Act, 2010” whose applicability is only restricted to the Province of Punjab and as such it cannot be stretched in case of trans-provincial establishment.

7. Learned counsel for respondent No.3 as well as learned Law Officer when confronted as to how the registration of respondent No.3 was made by respondent No.2 while invoking the latter Act, they have

failed to give any plausible answer. In order to properly comprehend the proposition involved herein guidance can be sought from PAKISTAN TELECOMMUNICATION COMPANY LTD. versus MEMBER NIRC and others (2014 SCMR 535). Relevant extract from the same is reproduced below :-

“12. After combined reading of the scheme of new labour laws, both Provincial and Federal, it may be concluded without any fear of rebuttal that two parallel forums have been created, one on a provincial basis whereas latter is federal level forum, called NIRC. Both these forums are having jurisdiction to deal with industrial disputes and unfair labour practice and other allied matters either attributable to the employer or the workers/workmen, however, the Federal Law has drawn a clear demarcation line of jurisdiction of these two different forums, i.e. Labour Courts in the Provinces and the other NIRC at the Federal Level. It is not the nature of dispute, particularly, unfair labour practice, which confers jurisdiction on one or the other forum but it is the status of the employer or the group of employers, which would determine the jurisdiction of the Provincial Labour Court and that of the NIRC. To be more clear on the point we have no hesitation to hold that once it is established though any means that the employer or group of employers has an establishment, group of establishments, industry, having its branches in more than one Provinces, then the jurisdiction of the NIRC would be exclusive in nature and of overriding and super imposing effects over the Provincial Labour Court for resolving industrial dispute including unfair labour practice, etc. related to the employer, having its establishment or branches or industrial units in more than one Province and recourse has to be made by the aggrieved party to the NIRC and not to the Provincial Labour Court.”

8. It is noticed that in the case reported as Messrs UNILEVER PAKISTAN FOODS LIMITED versus REGISTRAR, TRADE UNIONS and others (2017 PLC 102) a learned Single Bench of this Court has also pondered upon the scope of both the above referred statutes and held as under :-

“10. Both PIRA, 2010 and IRA, 2012 have received considerable judicial scrutiny in a fairly small amount of time since these enactments were promulgated. The two judgments that will be cited below interpreted and laid down law that have settled a number of issues including the ones raised in these writ petitions. In Pakistan Telecommunication's case, the Hon'ble Supreme Court had the occasion to dilate upon the two enactments and their scope. After reviewing the provisions of both PIRA, 2010 and IRA, 2012, it was held thus

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Law has drawn a clear demarcation line of jurisdiction of these two different forums, i.e. Labour Courts in the Provinces and the other NIRC at the Federal Level. It is not the nature of dispute, particularly, unfair labour practice, which confers jurisdiction on one or the other forum but it is the status of the employer or the group of employers, which would determine the jurisdiction of the Provincial Labour Court and that of the NIRC. To be more clear on the point we have no hesitation to hold that once it is established through any means that the employer or group of employers has an establishment, group of establishments, industry, having its branches in more than one Provinces, then the jurisdiction of the NIRC would be exclusive in nature and of overriding and super imposing effects over the Provincial Labour Court for resolving industrial dispute including unfair labour practice, etc. related to the employers, having it establishment or branches or industrial units in more than one Province and recourse has to be made by the aggrieved party to the NIRC and not to the Provincial Labour Court.

13. Even otherwise under the provision of Article 143 of the Constitution of Pakistan, 1973, laws enacted by the Parliament have been given overriding and superimposing effects over the laws enacted by a Provincial Assembly of any of the Province and in case of any clash or repugnancy between the two, the laws enacted by the Parliament shall prevail. Thus, on the touchstone of the provision of Article 143 of the Constitution, the Act of Parliament has been placed on the high pedestal and any Provincial Law enacted by the Provincial Assembly shall give way to the Federal Law, enacted by the Parliament, if the former is inconsistent or repugnant to the latter. Therefore, it is held that the provision of Act X of 2012 (the IRA, 2012) has overriding effect on all Provincial Labour Laws. Judged from this angle, we are of the firm view that in the present case, the learned Judge in Chamber of the Lahore High Court. Lahore while drawing the impugned judgment dated 26-11-2012 could not properly comprehend the intents and objects of the above provisions of law, rather misconstrued and misinterpreted the same, resulting into miscarriage of justice, the impugned judgment being not sustainable in the eye of law is liable to be set at naught. (emphasis supplied)

11. The issue of the vires of IRA, 2012 was deferred in the afore-mentioned judgment by the Hon'ble Supreme Court but it soon cropped up before this Court. A learned Division Bench of this Court in ICA No.53 of 2013 titled PTV Employees Ittehad Union Punjab v. Federation of Pakistan had the opportunity to delve in the matter. After tracing the history of Labour laws and a number of judgments on the subject, the vires of IRA, 2012 was upheld. While doing so, the determinations made by the learned Division Bench of this Court were as follows:

- (i) IRA, 2012 is applicable only to establishments located in Islamabad Capital Territory and Trans-Provincial Establishments and undertakings which have presence, factories and offices etc in more than one Province.
- (ii) The law has been promulgated to provide a mechanism for enforcement of a fundamental right i.e. freedom of association as enshrined in Article 17 of the Constitution to workers working in establishments operating in the Islamabad Capital Territory and in trans-provincial establishments and industry.

(iii) It is designed to provide a uniform and unified legal system and mechanism for enforcement of ILO Convention Nos.87 and 98 throughout the country.

(iv) The law is aimed at providing a legal framework relating to formation of trade unions, federation of trade unions, determining collective bargaining agents, regulation of relations between employers and workers of establishments in the Islamabad Capital Territory and in trans-provincial establishments and industry considering that such mechanism would not be available under provincial laws which have reach and applicability only within the territorial limits of each province.

(v) For the aforesaid purpose, Chapter 8 of the IRA, 2012 provides for constitution of a National Industrial Relation Commission (NIRC). It has the mandate to adjudicate and determine industrial disputes in Islamabad Capital Territory and relating to workmen of trans-provincial establishments, to register trade unions and industry wise trade unions and federations of such trade unions, to determine collective bargaining agents amongst trade unions and industry wise trade unions, to deal with cases of unfair labour practices etc. NIRC also advises the Federal Government on matters involving trade unions and industry wise trade unions in Islamabad Capital Territory and at a trans-provincial level in respect of education of workers in the essentials of trade unionism. This includes education in respect of their rights and obligations and to secure the provision of facilities required therefor and to apportion costs between Government, trade unions and federations of such trade unions and employers in such manner as may be considered equitable. The NIRC has exclusive jurisdiction in the aforesaid matters over establishments and group of establishments situated in Islamabad Capital Territory and trans-provincial establishments. (Emphasis supplied)

12. The dicta laid down in the afore-mentioned judgments leaves no room for doubt that the formation of trade unions of the workers of a trans-provincial Establishment and the matters incidental thereto are regulated by IRA, 2012. The petitioner being a trans-provincial Establishment is accordingly governed by IRA, 2012 and the unions operating in its various factories, offices and departments shall have to be registered with NIRC. It may be stated that in view of the importance of the issue, NIRC also got itself represented through its law officer and filed a specific report in the light of order dated 22.06.2016 passed by this Court requiring NIRC to answer the query as to whether respondent No.2 being a union located in one factory of the petitioner can be registered with NIRC or not. NIRC in the additional report by relying upon the judgment *Pakistan Telecommunication Company Limited v. Member NIRC and others* 2014 SCMR 535 made it clear that it was the status of the petitioner which would determine the question of registration of respondent No.2 with NIRC.

13. In the present case there is no dispute that respondent No.2 has a right to register itself as a trade union. This right of respondent No.2 is not even disputed by the petitioner. The case of the petitioner is simply that the Provincial Registrar exceeded his jurisdiction in registering respondent No.2 as the trade union under the provisions of PIRA, 2010 whereas the petitioner being a trans-provincial Establishment, the jurisdiction vested with NIRC under IRA, 2012. This stance of the petitioner is supported

both by NIRC and Federal Government.

14. It was also asserted that the members of respondent No.2 were not the employees of the petitioner but were in fact the employees of respondents Nos.4 and 5 who were the independent contractors, the implication being that such members had no right to get themselves registered as a trade union. This contention has no force in view of the clearly worded definition of "Worker" and "Workman" contained in section 2(xxxiii) of IRA, 2012. Similarly, the fact that other workers unions operating in the factory/offices/departments of the petitioner were registered with the Provincial Registrar hardly provides any lawful justification for the grant of similar status to respondent No.2.

15. This Court has already come to the conclusion that petitioner is indeed a trans-provincial Establishment based on the annual report 2015 brought on the record by the petitioner. Respondent No.2 also did not seriously object to the said status of the petitioner. Having established that the petitioner enjoyed trans-provincial status, the controversy regarding the law which governs the registration of the trade union of a trans-provincial Establishment does not pose a serious problem as it is covered by the ratio of the afore-mentioned two judgments according to which the nature of dispute does not confer jurisdiction on the relevant forum rather it is the status of the employer which is the determining factor and that NIRC is the sole authority with the power to register trade unions and industry-wise trade unions pertaining to the trans-provincial Establishments. The Provincial Registrar/respondent No.1 indeed misconstrued the provisions of Factories Act, 1934 in registering respondent No.2 whereas it had no authority under the law to do so. Order dated 17.08.2015 passed by the Provincial Registrar/respondent No.1 is, therefore, liable to be set aside.

16. In the result, this writ petition succeeds and orders dated 13.05.2014 and 17.08.2015 are set aside being without lawful authority and of no legal effect.”

Reference to this effect can also be made to P.T.V. EMPLOYEES' ITTEHAD UNION, PUNJAB through Secretary versus FEDERATION OF PAKISTAN through Secretary Government of Pakistan, Ministry of Law and Parliamentary Affairs and 6 others (2018 PLC 136).

9. The nutshell of above discussion is that respondent No.2 was not competent to register respondent No.3 as trade union and the registration certificate dated 02nd July, 2022 is without any lawful authority and *coram non judice*, as a sequel thereof this petition is **allowed** as prayed for, with no order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

APPROVED FOR REPORTING

JUDGE