

Before Muhammad Kamran Khan Mulakhail and Shaukat Ali Rakhshani, JJ

HAJJ ORGANIZERS ASSOCIATION OF PAKISTAN (HOAP) BALOCHISTAN ZONE through Executive Body Member---Petitioner

Versus

GOVERNMENT OF PAKISTAN through Federal Secretary, Ministry of Commerce, Islamabad and 2 others---Respondents

Constitutional Petition No. 1210 of 2024, decided on 30th September, 2024.

(a) Constitution of Pakistan---

---Art. 17---Trade Organizations Act (II of 2013), S. 14(3)(d)---Hajj Organizers Association of Pakistan---Holding of elections---Freedom of association---Scope---Petitioner/Hajj Organizers Association of Pakistan (HOAP) assailed notices issued by Director General Trade Organization (respondent), directing them to conduct elections of their office bearers within the scheduled time, while debarring the incumbent Members of Executive Committee from contesting the upcoming election---Contention of the petitioner was that the impugned notices were contrary to Art. 17 of the Constitution---Validity---Article 17 of the Constitution clearly manifests that every citizen shall have the right to form an association or union, but simultaneously it also enunciates that it is subject to reasonable legal restrictions imposed by the law---Similarly, holding of elections for the purpose of representation is also a fundamental right and requirement, which can neither be abridged or taken away nor it can be delayed without any lawful justification on the basis of lame pretext, thus such objection/contention of the petitioner was misconceived---Constitutional petition was dismissed, in circumstances.

(b) Trade Organizations Act (II of 2013)---

---Ss. 14(3)(d), 14(3)(e) & 21---Trade Organizations Rules 2013, R. 21(15)---Constitution of Pakistan, Art. 17---Hajj Organizers Association of Pakistan---Holding of elections---Incumbent debarred from contesting forthcoming elections---Legality---Petitioner/Hajj Organizers Association of Pakistan (HOAP) assailed notices issued by Director General Trade Organization (respondent), directing them to conduct elections of their office bearers within the scheduled time, while debarring the incumbent Members of Executive Committee from contesting the upcoming election---Contention of the petitioner was that not allowing the incumbent members of the executive committee to contest elections for the next tenure, was unjustified being violative of Art. 17 of the Constitution---Validity---Association of the petitioner was governed by Trade Organizations Act, 2013 ('the Act 2013')---Section 14(3)(d) of the Act 2013, inter alia, empowers the Regulator to watch and supervise any election held by or for the purpose of electing persons to the Executive Committee, whereas clause (e) of S.14(3) also enunciates that any person, committee or office bears of the trade organization in matters relating to the electoral process before the conduct of the election may approach the Regulator in appeal---Moreover, the Act 2013 also provides a remedy of appeal as contemplated under S. 21 of the Act 2013---Act 2013 was amended in the year 2022, wherein a number of amendments were made part of the Act 2013---Sub-rule (15) of R. 21 of the Trade Organization Rules of 2013 clearly contemplates that on completion of term, office bearers and members of the executive committee shall not be eligible to contest election or co-opt in any representative capacity in the trade organization for the next tenure, which straight away demolished the contention/argument of the petitioner that the members of executive committee of the organization could not be restricted to participate in the election for the second time for being violative of Art. 17 of the Constitution---Constitutional petition was dismissed, in circumstances.

Habibullah Nasar for Petitioner.

Khushal Khan Kasi, Assistant Attorney General ("A.A.G.") for Official Respondents.

Date of hearing: 23rd September, 2024.

JUDGMENT

SHAUKAT ALI RAKHSHANI, J.---The instant constitutional petition filed by the petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution"), carries the following relief;

"(i) After having adjudged the issuance of impugned notice under section 14(3)(d) of Trade Organizations Act, 2023 by the respondent No.2 bearing No.12(01)/2024-TO dated 30- 07-2024 to be not viable and unwarranted keeping in view the stakes of petitioner involved in the matter as the KSA would refuse to take Hajjis from the country, the same be cancelled;

(ii) Direct the respondent No.2 to extend 03 months' period in favour of petitioner for conducting due elections of office-bearers and executive committee members of the Association for the petitioner as per annexed election schedule viz: January, 2025;

(iii) Declare the circular / clarification dated 27th June, 2024 issued by the respondent No.2 putting bar on the incumbent Executive Committee members to be eligible to contest upcoming election is against the fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan, 1973;

(iv) Abstain the respondent No.2 from initiating punitive action against the petitioner's Association in pursuance of impugned notices dated 30-07-2024; 6.8.2024.

(v) Any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case is also solicited, in the interest of justice, equity and fairplay "

2. Condensed but relevant facts essential for disposal of the instant petition are that statedly petitioner's association is a licensed trade body styled as Hajj Organizers Association of Pakistan ("HOAP"), which promotes trade and looks after the affairs of its members, besides, it is also registered with Securities and Exchange Commission of Pakistan. It is case of the petitioner that Director General Trade Organization (respondent No.2) served upon them with a notice under section 14(3)(d) of the Trade Organizations Act, 2013 ("Act of 2013") bearing F.No:12(01)/2024-TO dated 30th July 2024, directing them to conduct elections of their office bearers within the scheduled time, which was responded by the association, seeking further time to hold election, thus respondent No.2 vide impugned letter dated 27th June, 2024 debarred the incumbent Members of Executive Committee for contesting the upcoming election, hence this petition.

3. Mr. Habibullah Nasar, learned counsel for the petitioner mainly contended that the notices impugned herein are contrary to Article 17 of the Constitution, thus the notices ibid being void ab-initio are unsustainable, therefore are liable to be withdrawn. It was argued that the elections could not be held due to Hajj Operations, which commenced w.e.f. 11.05.2024 and consummated on 22.07.2024, thus the hajj operators could not constitute an Election Commission and hold elections. He further contended that the incumbent members of the executive committee are not allowed to contest upcoming election for the second tenure, which is unwarranted and violative of Article 17 of the Constitution.

On the other hand, Mr. Khushal Khan Kasi, learned AAG strongly refuted the contentions of learned counsel for the petitioner and urged that holding of elections is a legal requirement, which has to be adhered to in any circumstance, thus maintained that it is nothing, but a lame excuse in order to prolong their tenure. He also stated that Article 17 of the Constitution is subject to certain legal restrictions and the notices issued to the petitioner for holding election does not in any way offend the Article ibid, thus the petition being meritless requires to be dismissed.

4. Heard. Record perused with the able assistance of learned counsel for the adversarial parties. The paramount contention of learned counsel for the petitioner regarding inviolable right enunciated under Article 17 of Constitution does not apply in the peculiar circumstances of the instant case. In order to understand the import and intent of the legislature so envisaged under Article 17 of Constitution, it would be convenient to reproduce the Article ibid, which reads as under;

"Freedom of association.

17. (1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

(2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.

(3) Every political party shall account for the source of its funds in accordance with law."

Article 17 of the Constitution clearly manifests that every citizen shall have the right to form association or union, but simultaneously it also enunciates that it is subject to reasonable legal restrictions imposed by the law. Similarly, holding of elections for the purpose of representation is also a fundamental right and requirement, which can neither be abridged or taken away nor it can be delayed without any lawful justification on the basis of any lame pretext, thus such objection of the petitioner having no bearing is overruled.

5. The association of the petitioner is governed by the Act of 2013. Section 14(3)(d) of the Act of 2013 inter alia empowers the Regulator to watch and supervise any election held by or for the purpose of electing persons to the Executive Committee, whereas clause (e) of section ibid also enunciates that any person, committee or office bears of the trade organization in matters relating to the electoral process before the conduct of the election may approach the Regulator in appeal. Moreover, the Act of 2013 also provides a remedy of appeal as contemplated under section 21 of the act ibid. The Act of 2013 was amended in the year 2022, wherein a number of amendments were made part of the Act of 2013. Learned counsel for the petitioner, while arguing the case stressed that the notices impugned herein and by not allowing the incumbent members of the executive committee to contest elections for the next tenure have no legal backing, besides being contrary to Article 17 of the Constitution. Sub-rule (15) of Rule 21 of the Trade Organization Rules of 2013, clearly contemplates that on completion of term, office bearers and members of the executive committee shall not be eligible to contest election or co-opt in any representative capacity in the trade organization for the next tenure, which straight away demolishes the argument of learned counsel for the petitioner that the members of executive committee of the organization cannot be restricted to participate in the election for the second time for being violative of Article 17 of the Constitution.

6. For the foregoing reasons, the petition being bereft of merits is dismissed and the interim order dated 22.08.2024 is recalled.

MQ/126/Bal.

Petition dismissed.