

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2278 of 2022
Rizwan Shoukat Silk Factory and others
Versus
Federation of Pakistan and others

Date of Hearing: 25.08.2022
Petitioners by: Syed Ahmad Hassan Shah and Mr. Babar Iqbal Chaudhry, Advocates
Respondents by: Malik Naseem Abbas Nasir Kalwar, Advocate for respondent No.2/D.G.T.O.
Mr. Salman Jamil, Deputy Director/ Deputy Regulator, D.G.T.O.
Malik Shaukat Nawaz, learned Assistant Attorney-General
Mr. Muhammad Naveed Khokhar, Advocate for respondent No.4

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petitions No.2278/2022 and 2714/2022 since they entail certain common features.

2. Through writ petition No.2278/2022, the petitioners, Rizwan Shoukat Silk Factory, etc., who are members of the Gujranwala Chamber of Commerce and Industry (“G.C.C.I.”), seek a declaration to the effect that Rule 2(1)(g) of the Trade Organizations Rules, 2013 (“the 2013 Rules”) are *ultra vires* the Trade Organizations Act, 2013 (“the 2013 Act”) and the Constitution of the Islamic Republic of Pakistan, 1973 (“the Constitution”). In the alternative, the petitioners seek the interpretation of the said Rule by reading it down so that the threshold of having an annual turnover of Rs.50 million for a member of a trade organization to qualify as a corporate member is made applicable only to business concerns.

3. Through writ petition No.2714/2022, the petitioners, HM Abdullah and Sons, etc., impugn order dated 01.06.2022 passed by the Directorate General of Trade Organizations (“D.G.T.O.”), dismissing the complaint filed by Mr. Afaq Ayub, etc. against the decision of the Secretary General, G.C.C.I. not to renew their membership in the corporate class. Furthermore, the petitioners also seek a declaration that the classification between associate and

corporate membership and the criteria for a member to have an annual turnover of Rs.50 million to qualify as a corporate member is *ultra vires* to the Constitution.

4. The petitioners in both the petitions are manufacturing concerns and were corporate members of the G.C.C.I. Rule 2(1)(g) of the 2013 Rules defines “corporate member” to mean a member of a trade organization which is either a body corporate or a multinational corporation with its head office or branch office in Pakistan or a sales-tax-registered manufacturing concern or a sales-tax-registered business concern having an annual turnover of not less than Rs.50 million. Although the petitioners possess sales tax registration but since they do not have an annual turnover of Rs.50 million or more, the Secretary General, G.C.C.I. did not renew their membership in the corporate class for the year 2022-23. This caused the petitioners to file a complaint (which is not on the record) before the D.G.T.O. Vide order dated 01.06.2022, the D.G.T.O. upheld the Secretary General’s decision not to grant membership in the corporate class to the petitioners. Soon thereafter, vide letters dated 02.06.2022, the Secretary General, G.C.C.I. informed the petitioners that since their tax returns showed that the annual turnover was less than Rs.50 million, the category of their membership had been changed from corporate to associate class. The petitioners, in writ petition No.2714/2022, decided not just to challenge the D.G.T.O.’s order dated 01.06.2022 but also the *vires* of Rule 2(1)(g) of the 2013 Rules as had been done earlier by the petitioners in writ petition No.2278/2022.

5. Learned counsel for the petitioners in both the petitions submitted that the petitioners had remained corporate members of the G.C.C.I. and are aggrieved by the manner in which the said trade organization is being administered and regulated by the D.G.T.O.; that the petitioners are manufacturing concerns and have sales tax registrations in their favour but presently, their annual turnover is not more than Rs.50 million; that Rule 2(1)(g) of the 2013 Rules defines a “corporate member”; that a member of a trade organization is not required to have an annual turnover of Rs.50 million to qualify as a corporate member if the terms “sales-tax-registered manufacturing

concern” and “sales-tax-registered business concern having annual turnover of not less than Rs.50 million” in the definition of a “corporate member” in Rule 2(1)(g) of the 2013 Rules are read disjunctively; that the said two terms must be read disjunctively since they are separated by the word “or”; that the 2013 Act does not provide for a distinction between a corporate member and an associate member; that the said distinction created by the 2013 Rules is arbitrary, discriminatory and in derogation with the rights conferred on the petitioners by Chapter-I of Part-II of the Constitution; and that the decision of the Secretary General, G.C.C.I. to change the petitioners’ status from corporate members to associate members is unlawful and made with the intention of disenfranchising them in the forthcoming election process. Learned counsel for the petitioners prayed for the writ petitions to be allowed in terms of the relief sought therein.

6. On the other hand, learned counsel for the G.C.C.I./respondent No.4 submitted that the petitioners have not bothered to file a copy of their complaint against the decision of the Secretary General, G.C.C.I. not to renew their membership in the corporate class; that the instant petition is not maintainable since the petitioners in writ petition No.2714/2022 have not preferred an appeal against the order dated 01.06.2022 passed by the D.G.T.O. to the Federal Government under Section 21(2) of the 2013 Act; that the said petitioners could have filed an appeal within the limitation period of fourteen days but having not done so, writ petition No.2714/2022 was filed on 19.07.2022 i.e., one month and nineteen days after the D.G.T.O.’s order dated 01.06.2022; that since the proprietor of petitioner No.1 has already been elected as Senior Vice President, G.C.C.I. for a period of two years, he is not qualified to contest for the position of the President, G.C.C.I. in the forthcoming elections; that petitioner No.1 has been a member of the G.C.C.I. for more than twenty years but has now decided to challenge the *vires* of Rule 2(1)(g) of the 2013 Rules only because he fails to qualify to continue to be a corporate member of the G.C.C.I.; that none of the petitioners in either petition claim that their annual turnover is more than Rs.50 million; that some of the petitioners have come directly to this Court without exhausting their remedy of filing a

complaint before the D.G.T.O.; and that to grant membership in the corporate class to the petitioners who do not satisfy the essential prerequisite of having an annual turnover of Rs.50 million would be a violation of the 2013 Rules. Learned counsel for the G.C.C.I. prayed for the writ petitions to be dismissed.

7. Learned counsel for the D.G.T.O. adopted the arguments of the learned counsel for the G.C.C.I.

8. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of these petitions have been set out in sufficient detail in paragraph 4 above and need not be recapitulated.

9. The 2013 Act was enacted to ensure appropriate representation of all genders and business sectors at all levels in trade organizations so that they play a significant role in developing policy framework for improving business environment and economic growth. Section 2(i) of the 2013 Act defines a “member of a trade organization” to mean a firm and includes a proprietorship, an association of persons, a partnership, a company or a multinational corporation, engaged in trade, industry or services and enrolled as a member of a trade organization licensed under the said Act.

10. The 2013 Rules were made by the Federal Government in exercise of powers conferred by Section 31 of the 2013 Act for carrying out the purposes of the said Act. Rule 20(2)(d) of the said Rules provides *inter alia* that the general body of the Federation of Commerce and Industry shall comprise of representatives, nominated by each licensed chamber, association, association of small traders, women’s chamber and chamber of small traders and in case of an association, at least one representative shall be nominated from the corporate class. Rule 21 provides for the organizational structure of chambers, chamber of small traders, associations, association of small traders, women’s chambers and town associations. Rule 21(5)(b) provides that the executive committee of all trade organizations, except Federation, shall comprise of persons elected by the general body from amongst its members, subject to the

condition that at least 50% of the members of the executive committee shall be from the corporate class. Rule 21(9) provides that in any trade organization where the general body comprises of at least 50% members from associate class, there shall be rotation of the office of the President and, as the case may be, the Chairman between the associate and corporate members. It is due to the rotation envisaged by Rule 21(9) of the 2013 Rules that the President that has to be elected in the forthcoming elections of the G.C.C.I. has to be a corporate member of the G.C.C.I. None of the petitioners would be qualified to contest for the office of the President, G.C.C.I. in the forthcoming elections as the Secretary General, G.C.C.I. has not renewed their membership in the corporate class but has placed them in the associate class.

11. The Secretary General, G.C.C.I. did not renew their membership in the corporate class since their tax returns showed that they had not satisfied the prescribed threshold in Section 2(1)(g) of the 2013 Rules of having an annual turnover of Rs.50 million. Since it is an admitted position that none of the petitioners have an annual turnover of Rs.50 million therefore, they do not qualify for the grant of membership in the corporate class for the year 2022-23. It is for this reason that the petitioners have challenged the *vires* of Rule 2(1)(g) of the 2013 Rules, which defines “corporate member.”

12. “Associate member” is defined in Rule 2(1)(b) whereas “corporate member” is defined in Rule 2(1)(g) of the 2013 Rules as follows:-

*“Associate member” means a member of a trade organization **which is not** a body corporate or a multinational or a sales-tax-registered manufacturing concern or a sales-tax-registered business concern having annual turn-over of not less than fifty million Rupees.*

*“Corporate member” means a member of a trade organization **which is** either a body corporate or a multinational corporation with its head office or branch office in Pakistan or a sales-tax-registered manufacturing concern or a sales-tax-registered business concern having annual turn-over of not less than fifty million Rupees.*

(Emphasis added)

13. The 2013 Rules draw a distinction between a corporate member and an associate member by requiring the former to have an annual turnover of not less than Rs.50 million whereas there is no such

requirement for being an associate member. This distinction is necessary because Section 2(s) and Section 2(t) of the 2013 Act define “small trader and small business” and “small industry” respectively to mean members of a trade organization whose annual business turnover ranges between Rs.2 million to Rs.20 million. A member of a trade organization having an annual turnover of more than Rs.20 million but less than Rs.50 million would be categorized as an associate member.

14. Section 19(1)(b) of the 2013 Act empowers the Federal Government to direct that firms, companies or concerns “or any class thereof” engaged in trade, commerce, industry or service to be members of a registered trade organization. Therefore, the 2013 Act does envisage a classification amongst firms, companies or concerns that are to become members of a registered trade organization.

15. This classification between an associate member and a corporate member made by the 2013 Rules distinguishes members of a trade organization with an annual turnover of less than Rs.50 million from those with an annual turnover of more than Rs.50 million. The classification between the two is reasonable and based on intelligible differentia. This distinction between the two groups of members has a rational nexus to the object sought to be achieved by the classification. One of the objects being the rotation of the office of the President of a trade organization between associate and corporate members where the general body of the trade organization comprises of at least 50% members from the associate class. Another being for the nominees of a trade organization for comprising the general body of the Federation of Commerce and Industry to have at least one nominee from the corporate class. Hence, it is my view that the distinction between an associate member and a corporate member of a trade organization in terms as envisaged by the 2013 Rules is neither in violation of the provisions of the 2013 Act nor is it discriminatory in any manner. Therefore, writ petition No.2278/2022 is liable to be dismissed.

16. The petitioners have not thrown challenge to Rule 11(7) of the 2013 Rules which provides that there shall be two classes of

memberships in a trade organization, except chamber of small traders and association of small traders. The striking down of Rule 2(1)(g) of the 2013 Rules would render ineffective the requirements in Rule 20(2)(d), Rule 21(5)(b) and Rule 21(9) of the 2013 Rules.

17. This Court, vide order dated 05.10.2021 passed in writ petition No.2655/2020 titled “M/s Muslim Industry etc. Vs. Director General T.O., Regulator of Trade Organizations etc.,” dismissed a challenge to an order passed by the D.G.T.O. excluding the names of members of All Pakistan Stainless Steel Importers and Traders Association from the voters list of the members of a corporate class on the ground that they did not have an annual turnover of more than Rs.50 million and therefore did not qualify to be corporate members of the said trade organization. Paragraphs 5 to 7 of the said order are reproduced herein below:-

“5. The petitioners claim to have been validly included at the initial stage in the provisional voters list of corporate members since they were manufacturing concerns and were not required to have an annual turn-over of Rs.50 million or more in terms of section 2(g) of the Trade Organization Rules, 2013. Rules 2(g) of the said Rules is produced herein below:-

“corporate member’ means a member of a trade organization which is either a body corporate or a multinational corporation with its head office or branch office in Pakistan or a sales-tax-registered manufacturing concern or a sales-tax-registered business concern having annual turn-over of not less than fifty million Rupees”.

6. It is not disputed that the petitioners are manufacturing concern and do not have an annual turn-over of Rs.50 million or more. If the interpretation that the learned counsel for the petitioners seeks for Rule 2(g) of the said Rules is to be accepted, it would mean that a manufacturing concern with hardly any turn-over would qualify to become a corporate member. ... The mere fact that a person or entity is a sales-tax-registered manufacturing concern would not exempt it from the requirement of having an annual turn-over of not less than Rs.50 million. The mere fact that the word “or” appears in Rule 2(g) of the said Rules between the expression “a sales-tax-registered manufacturing concern” and “a sales-tax-business concern having an annual turn-over of not less than 50 million rupees”, would also not mean that for a manufacturing concern to be a corporate member it need not have an annual turn-over of Rs.50 million or more.

7. The D.G.T.O. did not commit any illegality by setting aside the concurrent orders of the Election Commission and the Secretary General as the same were devoid of reasons and had not addressed the objections filed by respondent No.4 to the inclusion of the petitioners’ name in the provisional voters list of corporate class members.”

18. The order dated 01.06.2022 passed by the D.G.T.O. dismissing the complaint against the Secretary General, G.C.C.I.'s decision not to renew the petitioners' memberships in the corporate class is strictly in accordance with the law and does not suffer from any legal infirmity. Consequently, writ petition No.2714/2022 and No.2278/2022, being devoid of merit, are dismissed. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 08/09/2022

(JUDGE)

*Qamar Khan**

APPROVED FOR REPORTING