

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

“W.P No.2089 of 2020”

Nestle Pakistan Limited
Versus
The Registrar Trade Union & others

Petitioner By:	M/s Ahmed Farooq and Raheel Aslam, Advocates.
Respondents by:	Mr. Muhammad Asif Gujjar, Advocate. Shahzad Ali, Assistant, NIRC.
Date of decision:	11.08.2020

Ghulam Azam Qambrani, J: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has invoked the jurisdiction of this Court, with the following prayer;-

“In view of the above it is respectfully prayed that while allowing the instant writ petition, the impugned order dated 20.07.2020 passed by the respondent No.1 be set-aside and the petition for cancellation for respondent No.2/ Union’s registration be accepted.

It is also prayed that pending decision of this appeal the operation of the order dated 16.12.2016 with respect to issuance of the registration certificate in the name and style of “Mohib employee Union” may be suspended in the meanwhile.

Any other relief, this Hon’ble Court deems fit may also very graciously be granted to the petitioner.”

2. Brief facts as narrated in the petition are that there are nine registered trade unions in the petitioner’s company, but no Collective Bargaining Agent (hereinafter be called as “CBA”) has been elected, whereas proceedings have been initiated before respondent No.3 to conduct referendum for election of CBA from

amongst the registered trade unions; that the petitioner filed three cancellation petitions with the Registrar Trade Union including against respondent No.2 seeking cancellation of their registration under Section 11 of the National Industrial Relations Act, 2012; that prior to filing the above said petition against respondent No.2, the petitioner filed a Writ Petition No.1400/2017 before the Hon'ble Lahore High Court, Lahore, challenging the vires of order dated 16.12.2016 passed by the Joint Registrar Trade Union on the ground that the Joint Registrar has no jurisdiction to pass an order accepting an application for registration of a trade union in the absence of the Registrar Trade Union, which was dismissed vide order dated 17.10.2019, against which the petitioner has filed a CPLA No.3978/2019 before the Hon'ble Supreme Court of Pakistan, which is still pending; that through the impugned order dated 20.07.2020 the Registrar Trade Union has dismissed the petition for cancellation filed by the petitioner, hence, the instant petition.

3. Learned counsel for the petitioner contends that the impugned order is illegal, unlawful and is non-speaking and has been passed in violation of Section 24-A of the General Clauses Act, 1897; that the impugned order has been passed without application of independent mind, as the same has been passed without providing an opportunity to the parties to raise objection on the report submitted by the Inquiry Officer; that the respondent-Union does not have the requisite number of workers as its members which is violation of mandatory pre-requisites laid down under Section 8(2)(b) of IRA, 2012, as 6 trade unions were registered prior in time to the said three unions; that when respondent No.2 was registered as Union, five other unions were also registered whereas one union was already registered before that, therefore, when total membership of each union is calculated in view of Section 8(2) & 3 (a) of IRA, 2012, it becomes clear that respondent No.2 was not entitled to be registered as Trade Union, as the strength of its members was less than 1/5th of the total

number of workmen employed in the petitioner's establishment; that allowing the proposed referendum and permitting members of the union including respondent No.2 to cast vote will not only be against the law but would also defeat the lawful rights of the legitimate members of the genuine trade union to elect their Collective Bargaining Agent (CBA) to promote the workers' welfare, which would be against the letter and spirit of IRA, 2012.

4. On the other hand, learned counsel for the respondents submitted that the petitioner has already filed a writ petition No.2127/2020 before this Court against the same impugned order dated 20.07.2020, which is pending before learned Bench No. II of this Court but the learned counsel for the petitioner has concealed this material fact before this Court; that the petitioner has no *locus standi* to interfere in the matter of registration of a Trade Union; that the Registrar Trade Union has lawfully registered the Trade Unions after verification that the respondent-union had fulfilled all the legal requirements of Section 7 of the Industrial Relations Act, 2012.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

6. Perusal of the record reveals that the petitioner filed an application for cancellation of registration of Mohib Employees Union before the Registrar Trade Union, whereupon an inquiry officer was appointed for verifying the allegations levelled by the management. The said Inquiry Officer after conducting field visit, providing opportunity of hearing to both the parties and verifying the veracity of the allegations held that Mohib Employees Union has completed all the requirements of Section 7 and 8 of the Industrial Relations Act, 2012 i.e. requirements for application and requirements for registration. *Prima facie*, record further reveals that respondent No.2 has been registered as Trade Union after it had completed all the legal formalities and requirements of law, as such Mohib Employees Union was validly registered. Further it is settled law that the matter of registration of a Trade Union is

between the applying Trade Union and the Registrar whereas, the establishment has no *locus standi* to file application for cancellation of a Trade Union.

7. Section 19(4)(a) of the I.R.A. provides that every employer shall on being so required by the Registrar, submit, *inter alia*, a list of all workmen employed in the establishment excluding those whose period of employment in the establishment is less than three months. Section 19(5) of the I.R.A. provides that the Registrar shall, after verification of the lists submitted by the trade unions, prepare a list of voters in which shall be included the name of every workmen whose period of employment, as computed in accordance with subsection (4), is not less than three months and who is not a member of any of the contesting trade unions and shall, at least four days prior to the date fixed for the poll, send to each of the contesting trade unions a certified copy of the list of voters so prepared.

8. Record shows that respondent No.2/ Mohib Employees Union, had submitted a list of members including 500 contract employees which was to be verified by respondent No.1 before its registration, who as per record, after providing opportunity of hearing to both the parties registered respondent No.2 as Trade Union.

9. As per Section 8(1)(d) of the Industrial Relations Act, 2012, a trade union shall not be entitled to registration, unless 75% of its members from amongst "*the workmen actually engaged or employed in the establishment or establishments or the industry for which the trade union has been formed*". "Worker" and "workman" has been defined in section 2(xxxiii) of the Industrial Relations Act, 2012, to mean *inter alia* a person not falling within the definition of employer, who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor. In the case of "Karachi Electric Supply Corporation v. National Industrial Relations

Commission" (1983 PLC 367), it has been held that the Registrar is not to accept the list submitted by the trade union as a matter of course, but has to verify the list and after being satisfied about the correctness of the list in terms of the law, the voter's list is prepared and its certified copy is supplied to the trade union. In the instant case, *prima facie*, the Registrar Trade Union registered Mohib Employees Union after respondent No.2 completed all the requirements of law.

10. It is worth mentioning here that the petitioner has also filed writ petition No.2127/2020 against the same impugned order, which is pending adjudication before the learned Bench No.II of this Court. Although, the petitioner has challenged the registration of Pak Food Employees Union in the said writ petition but since both the petitions are arising out of one and the same impugned order, and this fact has been concealed that the other petition has been admitted for regular hearing one day prior to advancing arguments in this petition, by the same learned counsel. This conduct of the petitioner would also disentitle him to the relief claimed.

11. For what has been discussed above, learned counsel for the petitioner has failed to point out any infirmity, illegality, calling for interference by this Court in the impugned order passed by the Registrar, Trade Union dated 20.07.2020, therefore, this writ petition having no force, is hereby **dismissed**.

(Ghulam Azam Qambrani)
Judge

S.Akhtar