

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4934 of 2018

Khamas Saeed

Versus

Director General of Trade Organization and others

Date of Hearing: 09.10.2019.
Petitioner by: Mr. Ali Nawaz Kharal and Rana Rashid Javed, Advocates.
Respondents by: Malik Ghulam Sabir, Advocate for respondent No.4.
Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Khamas Saeed, impugns the order dated 21.12.2018 passed by the office of the Regulator of Trade Organizations, Directorate General of Trade Organizations (respondent No.1) dismissing his appeal against the order dated 15.12.2018 passed by the Election Commission, Federation of Pakistan Chambers of Commerce and Industry ("F.P.C.C.I.), whereby his objections against the candidature/nomination of Mr. Muslim Mohamedi (respondent No.4) for office of Vice President, F.P.C.C.I. was dismissed.

2. Learned counsel for the petitioner drew the attention of the Court to Rule 11(1)(a) of the Trade Organizations Rules, 2013 ("the 2013 Rules") and submitted that any business concern shall be eligible for grant or renewal of membership of any trade organization if such business concern meets *inter alia* the condition that the prospective member is a sole proprietorship or a partnership firm or an association of persons or a company holding National Tax Number ("N.T.N.") and Sales Tax registration, if applicable, in the name of the business concern; that Rule 11(1)(e) of the 2013 Rules also requires that a prospective member should have a valid N.T.N. and sales tax registration, if applicable; that Rule 15(1)(b) of the 2013 Rules provides *inter alia* that eligibility of a member of a trade organization to vote in the elections of the trade organization shall be subject to the condition that the member has fulfilled the conditions of

membership and renewal thereof of the respective trade organization under Rule 11 of the 2013 Rules; and that Rule 11(3) of the said Rules provides *inter alia* that if a member breaches any provision of these Rules or the Act, the membership may be cancelled or such member may be disqualified.

3. Learned counsel for the petitioner further submitted that the provisional list of voters for the year 2018 issued by the F.P.C.C.I. Karachi shows Mr. Shameem Mohamedi as the Chairman of M.A. Mohamedi & Co. with N.T.N. 0269468-9; that the said provisional list also shows Mr. Muslim Mohamedi/respondent No.4 as the Director of M.A. Mohamedi & Co. having the same tax number, i.e. No.0269468-9; that the said tax number, i.e. 0269468-9 has not been issued to M.A. Mohamedi & Co. but to Mr. Shameem Mohamedi; that there is nothing on the record to show that M.A. Mohamedi & Co. was a issued tax number at any material stage; that since M.A. Mohamedi & Co. was not issued a tax number by the Income Tax Authorities, the requirement of law enshrined in Rule 11(1)(a) and (e) of the 2013 Rules has not been complied with; and that this vital aspect of the case was not appreciated by respondents No.1 and 2 while concurrently dismissing the petitioner's objections to the candidature/nomination of respondent No.4 for election to the office of Vice President, F.P.C.C.I. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. On the other hand, learned counsel for respondent No.4 submitted that M.A. Mohamedi & Co. is a partnership registered under the provisions of the Partnership Act, 1932; that Mr. Shameem Mohamedi and respondent No.4 are amongst the partners of M.A. Mohamedi & Co. which is a member of the All Pakistan Fisheries Exporters Association, Karachi; that the membership of M.A. Mohamedi & Co. with the said trade organization still holds good; that respondent No.4, as one of the partners of M.A. Mohamedi & Co., was eligible to contest the elections of Vice President of F.P.C.C.I.; that N.T.N. of M.A. Mohamedi & Co. is 7352976-3; and that the concurrent orders passed by respondents No.1 and 2 do not suffer from any legal

infirmity. Learned counsel for respondent No.4 prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. The petitioner was a nominee of the All Pakistan Paper Merchants Association to contest the elections of Vice President of F.P.C.C.I. for the year 2019. Respondent No.4 was also one of the candidates for the office of Vice President of F.P.C.C.I. as a nominee of the All Pakistan Fisheries Exporters Association (“A.P.F.E.A.”).

7. On 15.12.2018, the petitioner had filed objections to respondent No.4’s candidature before the Election Commission, F.P.C.C.I./respondent No.2 on the ground that respondent No.4 was not eligible to be nominated as a candidate to contest the election for Vice President of F.P.C.C.I. as a nominee of the A.P.F.E.A. as its tax number in the provisional list of voters was that of Mr. Shameem Mohamedi.

8. The petitioner’s objections were dismissed by respondent No.2 vide order dated 15.12.2018. The said order dated 15.12.2018 was assailed by the petitioner in an appeal before the Regulator of Trade Organizations/respondent No.1 under Section 18(13) of the 2013 Rules. Vide order dated 21.12.2018, the said appeal was dismissed. The concurrent orders passed by respondents No.1 and 2 have been assailed by the petitioner in the instant writ petition.

9. The provisional list of voters for the year 2018 issued by F.P.C.C.I. shows Mr. Shameem Mohamedi, Chairman of M.A. Mohamedi & Co. with N.T.N. 0269468-9 at serial No.333. The name of respondent No.4 also appears at serial No.334 in the said list as a Director of M.A. Mohamedi & Co. with the same N.T.N., i.e. 0269468-9.

10. The final list of eligible voters for the year 2019 shows respondent No.4 as a partner of M.A. Mohamedi & Co. with N.T.N. 0269468-9. Respondent No.4 was A.P.F.E.A.’s nominee for the office of Vice President in F.P.C.C.I.’s 2019 elections.

11. Rule 11(1) of the 2013 Rules provides that any business concern shall be eligible for the grant or renewal of membership of any trade

organization if such a business concern meets the following conditions:-

- “(a) the prospective member is a sole proprietorship or a partnership firm or an association of persons or a company holding national tax number and sales tax registration, if applicable, in name of the business concern;*
- (b) the prospective member’s business fits within the defined business scope or area of jurisdiction of the trade organization as provided in the said trade organization’s approved memorandum and articles of association and under the licence granted by the Federal Government;*
- (c) the application for grant of membership has been proposed and seconded by existing members of the said trade organization;*
- (d) the prospective member has no criminal conviction; and*
- (e) the prospective member has a valid national tax number and sales tax registration, if applicable.”*

12. Rule 11(1)(a) and (e) of the 2013 Rules show *inter alia* that for a partnership firm to be eligible to be granted membership by any trade organization, it has to hold an N.T.N. in the name of the business concern. In the case at hand, the business concern is M.A. Mohamedi & Co. which is a partnership registered under the provisions of the Partnership Act, 1932. Mr. Shameem Mohamedi and respondent No.4 are amongst its partners. The N.T.N. of M.A. Mohamedi & Co. (partnership) is 7352976-3. There is nothing on the record to show that M.A. Mohamedi & Co. (partnership), with 7352976-3 as its N.T.N., was registered as a member of A.P.F.E.A. on the date when the nomination papers for the F.P.C.C.I.’s 2019 elections were filed.

13. Neither respondent No.4 nor M.A. Mohamedi & Co. (partnership) has 0269468-9 as their N.T.N. The said N.T.N. is that of Mr. Shameem Mohamedi. The Federal Board of Revenue’s Online Verification System as on 24.12.2018 showed N.T.N. 0269468-9 as that of Mr. Shameem Mohamedi under the category of *“individual.”*

14. The final list of eligible voters for the year 2019 issued by F.P.C.C.I. shows respondent No.4 as a partner of M.A. Mohamedi & Co. with N.T.N. 0269468-9. The said list does not mention M.A. Mohamedi & Co.’s N.T.N. as 7352976-3 but as 0269468-9, which, as mentioned above, is the N.T.N. of Mr. Shameem Mohamedi. Since N.T.N. 0269468-9 is not that of M.A. Mohamedi & Co. (partnership), it is my view that the requirements of Rule 11(1)(a) and (e) of the 2013 Rules were not fulfilled by said partnership for membership of

A.P.F.E.A. as on the date of the filing of the nomination papers. For reasons best known to respondent No.4, the membership certificate of M.A. Mohamedi & Co. (partnership) with A.P.F.E.A. was not brought on the record when the arguments of the learned counsel for the contesting parties were heard. In the interest of justice, this Court vide order dated 04.10.2019 required learned counsel for respondent No.4 to bring on record the membership certificate of M.A. Mohamedi & Co. (partnership) showing that it was a member of A.P.F.E.A. Vide application (C.M. No.3705/2019) respondent No.4 brought on record the Membership Certificate of M.A. Mohamedi & Co. (partnership), having N.T.N. 7352976-3, with A.P.F.E.A. This certificate was issued on 08.07.2019, i.e. after the 2019 F.P.C.C.I. elections. Since respondent No.4's nomination by A.P.F.E.A. was on the basis of him being a partner of M.A. Mohamedi & Co. (partnership) which had not even been issued a Membership Certificate by A.P.F.E.A. when the nomination papers for the 2019 F.P.C.C.I. elections were filed, respondent No.4 could not have been nominated by A.P.F.E.A. as a candidate for the position of Vice President of F.P.C.C.I.

15. In view of the above, the instant writ petition is allowed; and the order dated 21.12.2018 passed by respondent No.1 and the order dated 15.12.2018, passed by respondent No.2, are set aside. The matter is remanded to respondent No.2 to decide the objections to respondent No.4's candidature afresh after affording an opportunity of hearing to the contesting parties. Since respondent No.4 was elected as the Vice President of F.P.C.C.I., he shall continue to hold the said position until the decision of respondent No.2 on the petitioner's objection petition.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

APPROVED FOR REPORTING