

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3842 of 2020

Muhammad Asif

Versus

Director General Trade Organizations and others

| S. No. of order / proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
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16.12.2020

Mr. Ali Nawaz Kharal and Rana Rashid Javed, Advocates for the petitioner.
Malik Ghulam Sabir, Advocate for respondent No.4.

Through the instant writ petition, the petitioner, Muhammad Asif, impugns the order dated 04.12.2020 passed by the Directorate General of Trade Organizations (“D.G.T.O.”) whereby the appeal filed by the Secretary General, Bajaur Chamber of Commerce and Industry (“B.C.C.I.”) against the order dated 23.11.2020 passed by the Election Commission of the Federation of Pakistan Chamber of Commerce and Industry (“the Election Commission”) was allowed; the said order dated 23.11.2020 was set-aside; and a direction was issued to include the name of Mr. Lali Shah (respondent No.4) in the voters list as a nominee of B.C.C.I. from corporate class for the elections of the Federation of Pakistan Chamber of Commerce and Industry (“F.P.C.C.I.”) for the year 2021.

2. Learned counsel for the petitioner submitted that respondent No.4 could not become a Corporate Member of the B.C.C.I. since he did not fulfill the requirements of such membership prescribed in Rule 2(g) of the Trade Organizations Rules, 2013; that no document had been brought on record by respondent No.4 or the B.C.C.I. to show that respondent No.4’s business had an annual turnover of more than Rs.50 million; that respondent No.4 does not own a business which is a sales tax registered

manufacturing concern or a sales tax registered business concern; and that the order passed by the Election Commission to exclude respondent No.4's name was strictly in accordance with the law. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of relief sought therein.

3. On the other hand, learned counsel for respondent No.4 submitted that there is an exemption from the applicability of the Sales Tax Act, 1990 to the areas formerly known as Federal Administered Tribal Areas ("F.A.T.A."); that Bajaur also falls in the territory formerly known as F.A.T.A.; that since the petitioner had objected to the eligibility of respondent No.4 to be nominated by the B.C.C.I. to take part in the F.P.C.C.I.'s elections-2021, it was incumbent upon the petitioner to prove that the annual turnover of respondent No.4's business was not less than Rs.50 million; and that the impugned order dated 04.12.2020 passed by the D.G.T.O. does not suffer from any legal infirmity. Learned counsel for respondent No.4 prayed for the writ petition to be dismissed.

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

5. The record shows that B.C.C.I. had nominated respondent No.4, who is the proprietor of Shah Traders, to take part in the elections to the Executive Committee and the General Body of the F.P.C.C.I. On 10.11.2020, the petitioner had filed objections before the Secretary General, F.P.C.C.I. to the nomination of respondent No.4 on the ground that he did not qualify to be a Corporate Member, B.C.C.I. as he had not fulfilled the conditions set out in Rule 2(g) of the Trade

Organizations Rules, 2013. On 16.11.2020, the Secretary General, F.P.C.C.I. recorded the request of the B.C.C.I. to *“furnish the renewed license or any correspondence with the D.G.T.O.”* Against the said order, the petitioner preferred an appeal before the Election Commission. In the said appeal, it was pleaded *inter alia* that Rule 18(5) of the Trade Organizations Rules, 2013, the Secretary General was required to decide the objections within a period of five days. On 23.11.2020, the Election Commission passed an order excluding respondent No.4 from the voters list for the F.P.C.C.I.’s elections-2021. This was done on the ground that no supporting document had been given to confirm that Mr. Lali Shah was eligible to become a Corporate Member of the B.C.C.I. The B.C.C.I. filed an appeal against the said order dated 23.11.2020 before the D.G.T.O. Vide order dated 04.12.2020, the said appeal was allowed and a direction was issued to the F.P.C.C.I. to include respondent No.4’s name as a nominee of the B.C.C.I. in the voters list for the F.P.C.C.I.’s elections-2021. The instant writ petition has been filed by the petitioner against the said order dated 04.12.2020.

6. Learned counsel for the petitioner very fairly submitted that since after the merger of the territory formerly known as F.A.T.A. with the Province of Khyber Pakhtunkhwa, an exemption had been granted by the Government from the payment of sales tax and income tax for the said area. Since there was an exemption from the payment of sales tax and income tax with respect to the business activity in the said area, respondent No.4 was not under an obligation to obtain sales tax registration for his business in the said area. Additionally, in view of the said

exemption respondent No.4 was also not under an obligation to file his sales tax or income tax returns. Therefore, the annual turnover of respondent No.4's business could not be determined due to the non-filing of such returns.

7. The order dated 23.11.2020 passed by the Election Commission shows that a copy of a valid license issued by the B.C.C.I. had been submitted. This would lead to a presumption that respondent No.4's status as a Corporate Member is valid unless it is proved to be otherwise by an objector like the petitioner. Other than a bare statement that the annual turnover of respondent No.4's business is not more than Rs.50 million, no document has been placed on the record to prove the same.

8. In view of the above, I do not find any legal infirmity in the order dated 04.12.2020 passed by the D.G.T.O. Consequently, the instant writ petition is dismissed in *limine*.

(MIANGUL HASSAN AURANGZEB)
JUDGE

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