

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Misc. Civil Appeal No.02/2018

Mian Nasser Hayat Maggo

Versus

Federation of Pakistan through Secretary, Ministry of Commerce
and others

Date of Hearing: 17.01.2019
Appellant by: M/s Ajmal Ghaffar Toor and Ali Nawaz Kharal, Advocates.
Respondents by: Mr. Shumayl Aziz, learned Assistant Attorney-General.
Malik Ghulam Sabir, Advocate for respondent No.4.

MIANGUL HASSAN AURANGZEB, J:- Through the instant appeal under Section 21(4) of the Trade Organizations Act, 2013 (“the 2013 Act”), the appellant, Mian Nasser Hayat Maggo, impugns the order dated 11.05.2018, passed by the Secretary, Ministry of Commerce (respondent No.1), allowing the appeal filed by Halal Products and Services Association of Pakistan (respondent No.4) against the order dated 03.04.2018, passed by the Directorate General of Trade Organizations (respondent No.2). Vide the said order dated 03.04.2018, respondent No.2 dismissed respondent No.4’s application dated 14.03.2018 for the renewal of its licence on the ground that the same had been filed with a delay of almost three months.

2. The facts essential for the disposal of the instant appeal are that on 18.03.2013, the Ministry of Commerce (Government of Pakistan) granted a licence to respondent No.4 in exercise of the powers conferred by Section 3 of the 2013 Act. The said licence was granted to respondent No.4 to represent trade, commerce, industry or service or any combination thereof in Halal Products and Services on all Pakistan basis. The said licence was valid for a period of five years.

3. On 14.03.2018 (i.e. four days prior to the expiry of respondent No.4’s licence), respondent No.4 applied to respondent No.2 for the renewal of its licence. Vide order dated

03.04.2018, respondent No.2 turned down respondent No.4's application for the renewal of its licence primarily on the ground that the said application had been filed with the delay of almost three months. It may be mentioned that Section 6(2) of the 2013 Act provides that an application for the renewal of a licence shall be made to the Regulator ninety days prior to the expiry of the licence.

4. The said order dated 03.04.2018 was assailed by respondent No.4 in an appeal under Section 21(2) of the 2013 Act before respondent No.1. Vide order dated 11.05.2018, respondent No.1 allowed the said appeal. Since the said appellate order is very brief, the same is reproduced herein below, in its entirety:-

"Please refer to your Appeal dated 17th April 2018 on the subject noted above.

2. Secretary, Commerce Division has been pleased to approve one time condonation of delay in filing of application for renewal of licence of the appellant Association. You may approach the office of Directorate General of Trade Organizations for further necessary action."

5. The said appellate order dated 11.05.2018 has been assailed by the appellant in the instant appeal.

6. Learned counsel for the appellant, after narrating the facts leading to the filing of the instant appeal, submitted that since respondent No.4's licence dated 18.03.2013 was due to expire on 18.03.2018, it was incumbent upon respondent No.4 to have applied for the renewal of the said licence ninety days prior to its expiry in terms of Section 6(2) of the 2013 Act; that respondent No.4 submitted an application for the renewal of its licence four days prior to its expiry; that neither was the said application accompanied by an application for condonation of delay nor was any ground taken in the said application justifying the delay with which the said application was submitted; that since respondent No.4 did not come up with a sufficient cause for condoning the delay with which the said application for renewal of the licence was submitted, respondent No.2 did not commit any illegality in rejecting respondent No.4's time barred application for the renewal of its licence; that even in respondent No.4's appeal

before respondent No.1, no justification was given for the delay in the filing of the application for the renewal of the licence; that respondent No.1 erred by condoning the delay especially when no application for condonation of delay had been filed by respondent No.4; that respondent No.1's order dated 11.05.2018 is devoid of reasons and therefore, in violation of Section 24A of the General Clauses Act, 1897; that respondent No.1 ignored the mandate of the proviso to Section 6(2) of the 2013 Act which mandated that the period for filing an application for the renewal of a licence could be extended by the Regulator "*on sufficient cause being shown by an order in writing*"; and that respondent No.1's order dated 11.05.2018 is silent as to the "*sufficient cause*" which persuaded respondent No.1 to condone the delay in the filing of respondent No.4's application for renewal of its licence. Learned counsel for the appellant prayed for the appeal to be allowed in terms of the relief sought therein.

7. On the other hand, learned counsel for respondent No.4 submitted that the appellant had no *locus standi* to file the instant appeal; that under Section 21(4) of the 2013 Act, an appeal could be filed only by an "*aggrieved person*"; that the appellant cannot be considered to have been aggrieved by the order dated 11.05.2018, passed by respondent No.1; that under Section 7(1)(a) of the 2013 Act, a licence granted to a trade organization can be cancelled by the Federal Government where a trade organization fails to apply for the renewal of the licence within the prescribed or extended period allowed by the Regulator; that till date, respondent No.4's licence has not been cancelled by the Federal Government; that a licence issued to a trade organization cannot be cancelled unless a show cause notice is issued to such an organization in terms of Section 7(2) of the 2013 Act; and that the mere fact that respondent No.4 did not apply for condonation of delay in the submission of its application for the renewal of the licence did not, in any manner, prevent either respondent No.1 or respondent No.2 from condoning the delay in the filing of such an application. Learned

counsel for respondent No.4 prayed for the appeal to be dismissed.

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

9. The facts leading to the filing of the instant appeal have been set out in sufficient detail in paragraphs 2 to 5 above and need not be recapitulated.

10. Section 6(1) of the 2013 Act provided that a licenced trade organization shall require renewal of its licence every five years, whereas Section 6(2) of the said Act provides that the application for the renewal of a licence shall be made to the Regulator ninety days prior to the expiry of the licence. The proviso to Section 6(2) provides that on sufficient cause being shown by an order in writing, the Regulator may extend the period not exceeding thirty days. Section 6(4) provides that the Regulator, on receipt of the application for renewal of a licence, shall endeavour to decide it before the expiry of the licence.

11. The cumulative reading of Section 6(1), (2) with its proviso and (4) shows that an application for the renewal of a licence must be filed by a trade organization ninety days prior to its expiry and a delay in filing such an application can be condoned by the Regulator by a maximum period of thirty days *“on sufficient cause being shown by an order in writing”*.

12. The licence issued to respondent No.4 on 18.03.2013 was due to expire on 18.03.2018. In terms of Section 6(2) of the 2013 Act, respondent No.4 had to apply by 17.12.2017 (i.e., ninety days prior to the expiry of the said licence) for the renewal of its licence. It is an admitted position that respondent No.4 submitted an application before respondent No.2 for the renewal of its licence on 14.03.2018 (i.e., just four days prior to the expiry of the said licence). In respondent No.4's said application dated 14.03.2018, it has clearly been mentioned that the licence was to expire on 18.03.2018. In the said application, there is no mention of any ground which caused the delay in the submission of the said application. Respondent No.4 did not even apply for an

extension in the period fixed by Section 6(2) of the 2013 Act for the submission of the application for the renewal of its licence. Having not done so, respondent No.2 cannot be faulted for rejecting respondent No.4's time barred application for the renewal of its licence.

13. Respondent No.4, in its appeal, did not plead any sufficient cause for the delay in filing its application for the renewal of its licence. A separate application for condonation of delay had also not been filed by respondent No.4 either before respondent No.1 or respondent No.2. The proviso to Section 6(2) of the 2013 Act provided that the delay in the submission of the application for the renewal of the licence could be condoned by the Regulator for a period not exceeding thirty days, *"on sufficient cause being shown by an order in writing"*. The Regulator cannot be expected to extend the period within which an application for renewal of a licence could be filed without mentioning the sufficient cause for such an extension by an order in writing. Additionally, when the applicant does not come up with any sufficient cause for the delay in the filing of an application for the renewal of its licence, the Regulator could not, on its own, condone the delay in the filing of such an application. Even in the proceedings before this Court, the learned counsel for respondent No.4 could not come up with any explanation as to the delay in the filing of the application for the renewal of its licence ninety days prior to its expiry. Respondent No.1 appears to have been oblivious to the requirements of the proviso to Section 6(2) of the 2013 Act by condoning the delay in respondent No.4's application for the renewal of its licence without mentioning the sufficient cause for such a condonation in the impugned order dated 11.05.2018. Redundancy cannot be attributed to any provision of the Statute. Respondent No.1 could not ignore the requirement to set out the sufficient cause in its order for condoning the delay in respondent No.4's application for the renewal of its licence.

14. As regards respondent No.4's objection that the appellant is not an aggrieved person, the same is without substance for the simple reason that the appellant was contesting elections to the

post of Senior Vice President of the Federation of Pakistan Chamber of Commerce and Industry against respondent No.5, who had been nominated by respondent No.4. Therefore, the appellant could not be termed as a person not aggrieved by the impugned appellate order dated 11.05.2018 especially when the same is in violation of the proviso to Section 6(2) of the 2013 Act.

15. A trade organization licenced under the provisions of the 2013 Act is expected to strictly comply with the provisions of the said Act. Furthermore, the Regulator and the appellate authority are also under an obligation to pass orders strictly in conformity with the provisions of the said Act. The question raised by the appellant in the instant appeal was a pure question of law *viz* whether the delay in the filing of an application for the renewal of a licence by a trade organization can be condoned without an order in writing clearly setting out "*the sufficient cause*" for condoning such a delay as required by the proviso to Section 6(2) of the said Act.

16. Section 7(1)(a) of the 2013 Act provides that a licence granted to a trade organization shall be cancelled by the Federal Government where a trade organization fails to apply for the renewal of its licence within the prescribed or extended period allowed by the Regulator. Section 7(2) of the said Act provides that where the Federal Government intends to cancel the licence of a trade organization, it shall issue a show cause notice to such a trade organization specifying the grounds for its intention to cancel the licence and provide an adequate opportunity of being heard before deciding the matter. It is an admitted position that till date, no show cause notice under Section 7(2) of the said Act has been issued by the Federal Government to respondent No.4. In other words, respondent No.4's licence has not been cancelled as yet. Be that as it may, what I am concerned with for the present purposes is whether respondent No.1's order for condoning the delay in the filing of respondent No.4's application for the renewal of its licence was in violation of the requirements of the proviso to Section 6(2) of the said Act.

17. Since the appellate order dated 11.05.2018 does not make any reference to a sufficient cause for granting one time condonation in the delay in the filing of the application for the renewal of respondent No.4's licence, it can safely be held to be in violation of the requirement in the proviso to Section 6(2) of the 2013 Act. This violation renders the impugned order dated 11.05.2018 to be not sustainable. Consequently, the instant appeal is allowed; the impugned order dated 11.05.2018 is set-aside and the matter is remanded to respondent No.1 to decide respondent No.4's appeal afresh in accordance with the requirements of the 2013 Act.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2019.

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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