

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4682/2018

Noor Ahmed Khan and another

Versus

Director General of Trade Organizations, Directorate General of
Trade Organizations and others

Date of Hearing:	23.09.2019
Petitioners by:	Malik Ghulam Sabir, Advocate
Respondents by:	Malik Tariq Mehmood Noon, learned Deputy Attorney-General Ch. Akbar Ali and Ms. Ruqia Samee, learned Assistants Attorney-General M/s Ali Nawaz Kharal and Rana Rashid Javed, Advocates for respondent No.4.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners impugn the appellate order dated 04.12.2018 passed by the Regulator of Trade Organizations (respondent No.1), whereby appeal filed by respondent No.4 (Khamas Saeed) against the order dated 16.11.2018 passed by the Election Commission of the Federation of Pakistan Chamber and Commerce Industry (respondent No.3), was allowed and the nomination papers of petitioner No.1 (Noor Ahmad Khan) were found not to be in accordance with the prevalent rules and he was not permitted to exercise the right to cast his vote from the forum of All Pakistan Fruit and Vegetable Exporters, Importers and Merchants Association (petitioner No.2) in the election of the Federation of Pakistan Chambers and Commerce Industry (“F.P.C.C.I.”) (respondent No.2).

2. The facts essential for the disposal of the instant petition are that petitioner No.2/Association is a trade organization registered under the provisions of the Trade Organizations Act, 2013 (the 2013 Act”). On 27.10.2017, respondent No.3 issued the provisional voters list of the nominees of trade organizations for the elections of F.P.C.C.I. for the year 2019. Petitioner No.1’s name appeared at serial No.266 of the said list as a nominee of petitioner No.2/Association.

3. Respondent No.4 challenged the inclusion of petitioner No.1’s name in the said voters list on the ground that petitioner No.1 was not eligible to become a member of petitioner No.2/Association. It was

asserted that petitioner No.1 was not the Managing Director of M/s Hamza Brothers Impex, whose National Tax Number (“N.T.N.”) was 1333199-0, and that petitioner No.1 had a different tax number.

4. Vide order dated 07.11.2018, the Secretary General, F.P.C.C.I. rejected respondent No.4’s objections to petitioner No.1’s nomination and inclusion in the voters list. Furthermore, it was held that petitioner No.1 was a partner in M/s Hamza Brothers Impex and fulfilled the laid down requirements for being nominated to vote in the F.P.C.C.I.’s elections for the year 2019. Respondent No.4 preferred a representation against the said order before respondent No.3 under Rule 18(6) of the Trade Organizations Rules, 2013 (“the 2013 Rules”). Vide order dated 16.11.2018, the said representation was turned down. The said order dated 16.11.2018 was further challenged in an appeal under Rule 18(7) of the 2013 Rules before respondent No.1. Vide impugned order dated 04.12.2018, the said appeal was allowed and petitioner No.1 was not allowed to exercise the right to cast his vote as a nominee of petitioner No.2/Association in the F.P.C.C.I.’s elections of 2019. The said order dated 04.12.2018 has been assailed by the petitioners in the instant writ petition.

5. Learned counsel for the petitioners submitted that initially M/s Hamza Brothers Impex was a sole proprietorship with Muhammad Ilyas Raja as its sole proprietor; that the N.T.N. of M/s Hamza Brothers Impex was 1333199-0; that partnership deed dated 15.07.2016 shows that petitioner No.1 and Muhammad Ilyas Raja were the partners of M/s Hamza Brothers Impex; that vide letter dated 18.07.2016, the Commissioner Inland Revenue, Regional Tax Office-II, Karachi was intimated by Muhammad Ilyas Raja that he wanted to enter petitioner No.1 as a partner in the business of M/s Hamza Brothers Impex; that M/s Hamza Brothers Impex was issued a membership certificate by petitioner No.2 on 13.03.2016; and that as per the said membership certificate, M/s Hamza Brothers Impex’s N.T.N. is 1333199-0.

6. Furthermore, it was submitted that the list of registered members issued by petitioner No.2/Association on 31.03.2018 included the name of M/s Hamza Brothers Impex (partnership) with petitioner No.1 as its representative at serial No.63 of the said list; that the provisional voters list issued by F.P.C.C.I. for the year 2019

included the name of M/s Hamza Brothers Impex (partnership) showing petitioner No.1 as its partner; that petitioner No.1's N.T.N. was shown in the said list to be 1333199-0; that respondent No.1 erred by reversing the concurrent findings of respondent No.2 and respondent No.3; that the impugned order dated 04.12.2018 does not refer to any provision of the 2013 Act or the 2013 Rules which had been violated in petitioner No.1 being nominated as a representative of M/s Hamza Brothers Impex which is a member of petitioner No.2/Association; and that there was no legal impediment in petitioner No.1 being nominated by M/s Hamza Brothers Impex (partnership) to cast his vote. Learned counsel for the petitioners prayed for the writ petition to be allowed and for the impugned order dated 04.12.2018 to be set-aside.

7. On the other hand, learned counsel for respondent No.4 submitted that the impugned order dated 04.12.2018 does not suffer from any jurisdictional infirmity so as to warrant interference in the Constitutional jurisdiction of this Court. He further submitted that petitioner No.1 was not the Managing Partner of M/s Hamza Brothers Impex (partnership); that the partnership deed dated 15.07.2016 has not been registered under the provisions of the Partnership Act, 1932; that N.T.N. 1333199-0 had been issued to three entities namely Baloch Corporation, Seabirds Fisheries and Hamza Brothers Impex of which Muhammad Ilyas Raja is the sole proprietor; that the partnership of M/s Hamza Brothers Impex has not been issued a separate N.T.N.; that petitioner No.1 had procured N.T.N. for his business by the name of M/s Noor Ahmad Khan; that the records of Federal Board of Revenue show that M/s Hamza Brothers Impex is represented by Muhammad Ilyas Raja; that petitioner No.1 does not hold a valid membership of petitioner No.2; that petitioner No.1 was not eligible to become a member of petitioner No.2/Association; that the name of petitioner No.1 could not have been included in the voters list as a representative of petitioner No.2/Association; and that in view of the disputed membership of petitioner No.1 in other trade organizations, including North Karachi Association of Trade and Industry, his name could not have been included in the voters list. Learned counsel for respondent No.4 prayed for the writ petition to be dismissed. In

making his submissions, learned counsel for respondent No.4 placed reliance on the judgment in the case of Mian Naseer Hayat Mago Vs. Federation of Pakistan (2019 CLD 267) and an unreported order dated 24.02.2018 passed by this Court in writ petition No.4683/2018 titled “Fitrath Ilyas Bilour etc. Vs. Director General of Trade Organizations etc.”

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 the instant petition have been set out in sufficient detail in paragraphs 2 to 4 above, and need not be recapitulated.

9. The 2013 Rules have been framed by the Federal Government in exercise of the powers conferred by Section 31 of the 2013 Act. Rule 18 of the said Rules sets out the procedure for the elections of the trade organizations. Rule 18(3) of the said Rules provides that the Secretary General of a Trade Organization shall display, within seven days of the announcement of the election schedule, the provisional list of all members eligible to vote along with their National Tax Number, Sales Tax Registration Number, if applicable, the name and the National Identity Card number of their representatives. On 27.10.2018, the Secretary General, F.P.C.C.I. issued the provisional list of the nominees of the member trade organizations for the F.P.C.C.I.’s elections for year 2019. The name of petitioner No.2/Association was at serial No.266 of the said list showing petitioner No.1 as its nominee.

10. Rule 18(4) of the 2013 Rules provides that members who have objections to the entries in the list of voters shall send their objections in writing to the Secretary General, F.P.C.C.I. within a period of seven days of the issuance of the voters list. Apparently, respondent No.4 submitted objections to the validity of petitioner No.1’s nomination by petitioner No.2/Association to participate in the said elections.

11. Rule 18(5) of the said Rules provides that the Secretary General, F.P.C.C.I. shall, within five days from the receipt of objections intimate action on the objections or changes, if any. As mentioned above, respondent No.4’s said objections were spurned by the Secretary General, F.P.C.C.I. vide order dated 07.11.2018. Rule 18(6) of the said Rules provides that any person aggrieved by the decision of the

Secretary General may, within three days of the receipt of the decision, make a representation to the Election Commission which shall decide the representation within three days. Respondent No.4's representation against the said order dated 07.11.2018 was turned down by respondent No.3 vide order dated 16.11.2018.

12. Rule 18(7) of the said Rules provides a remedy of an appeal to a person aggrieved by the decision of the Election Commission to the Regulator of the Trade Organizations. Respondent No.4's appeal against respondent No.3's said order dated 16.11.2018 was allowed by respondent No.1 vide impugned order dated 04.12.2018. In the said order, respondent No.1 observed that petitioner No.1's nomination on behalf of M/s Hamza Brothers Impex was not in accordance with prevalent rules.

13. The impugned order dated 04.12.2018 has resulted in the disenfranchisement of petitioner No.1 who was the nominee of petitioner No.2/Association with respect to F.P.C.C.I.'s elections of 2019. Such a disenfranchisement is a penal consequence which shall ensue only if a nomination of a representative by a registered trade organization clearly falls foul of the requirements of the 2013 Act or the 2013 Rules.

14. 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.”*

15. A business concern cannot become a member of a trade organization unless it has a valid N.T.N. Only the representative of a

business concern which has been granted membership by a trade organization can be nominated by such a trade organization to contest elections of F.P.C.C.I. It is an admitted position that initially Muhammad Ilyas Raja was the sole proprietor of entities, including M/s Hamza Brothers Impex having N.T.N. 1333199-0. On 15.07.2016, a partnership deed was executed between petitioner No.1 and Muhammad Ilyas Raja for the business of fruit and vegetable exporters, importers and merchants under the name and style of M/s Hamza Brothers Impex.

16. The list of the registered members of petitioner No.2/Association issued on 31.03.2018 shows M/s Hamza Brothers Impex's name appearing at serial No.63 with petitioner No.1 as its representative. The provisional voters list issued by the Secretary General, F.P.C.C.I. for the year 2019 bears petitioner No.2/Association's name at serial No.266 with petitioner No.1 as its nominee. The said list shows petitioner No.1 as a partner of M/s Hamza Brothers Impex having N.T.N. 1333199-0. The vital question that needs to be determined is whether M/s Hamza Brothers Impex is the sole proprietorship or the partnership of whom petitioner No.1 was the representative. It ought to be borne in mind that both the sole proprietorship and partnership are styled as "M/s Hamza Brothers Impex" but are two different entities.

17. M/s. Hamza Brothers Impex's Membership Certificates dated 13.03.2016, 31.03.2017 and 31.03.2018 with petitioner No.2/Association show 1333199-0 as its N.T.N. These Membership Certificates are not of M/s Hamza Brothers Impex (partnership) but of M/s Hamza Brothers Impex (sole proprietorship). Since the partnership deed was executed on 15.07.2016, the said Membership Certificates, especially the Membership Certificate dated 13.03.2016 could not have been for the partnership of M/s Hamza Brothers Impex. All these Membership Certificates are of M/s. Hamza Brothers Impex (sole proprietorship) since they all bear the same N.T.N., i.e. 1333199-0. It is an admitted position that petitioner No.1's nomination is on the basis of him being a partner of M/s Hamza Brothers Impex.

18. Since the petitioners had not filed the Membership Certificate of M/s Hamza Brothers Impex (partnership) with petitioner

No.2/Association, learned counsel for the petitioners, on 21.06.2019, had sought some time to assist the Court on the question whether M/s Hamza Brothers Impex (partnership) had been granted membership by petitioner No.2/Association. Through application (C.M.No.2898/2019), the petitioners brought on record Membership Certificate dated 04.04.2019 of the M/s Hamza Brothers Impex (partnership) with petitioner No.2/Association. This Membership Certificate was issued after F.P.C.C.I. elections of 2019. This certificate shows N.T.N. of M/s Hamza Brothers Impex (partnership) to be 5210244-0 which is different to the one issued to M/s Hamza Brothers Impex (sole proprietorship). A trade organization cannot nominate the representative of an entity which is not its member when the nomination papers for F.P.C.C.I. elections are filed. This causes me to hold that M/s. Hamza Brothers Impex (partnership) was not a member of petitioner No.2/Association when F.P.C.C.I. elections of 2019 were held. Hence, petitioner No.1 could not have been nominated by petitioner No.2/Association to represent M/s Hamza Brothers Impex (partnership) which had not even been granted a Membership Certificate when F.P.C.C.I. elections of 2019 took place.

19. In view of the above, I do not find any legal or jurisdictional infirmity in the impugned order dated 04.12.2018 passed by the respondent No.1. Consequently, the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

*Qamar Khan**