

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.4172/2019

Aftab Ahmed Barlas

**Versus**

Director General of Trade Organization and others

**Date of Hearing:** 24.09.2020

**Petitioner by:** Malik Ghulam Sabir, Advocate

**Respondents by:** M/s Ali Nawaz Kharal, Rana Rashid Javed,  
and Naeem Ahmed Awan, Advocates  
Mr. Muhammad Nadeem Khan Khakwani,  
learned Assistant Attorney-General  
Mr. Arshad Nawaz, Deputy Director,  
D.G.T.O.

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**MIANGUL HASSAN AURANGZEB, J:-** Through this judgment, I propose to decide writ petition Nos.4172/2019 and 4321/2019 since they entail certain common features.

2. Through writ petition No.4172/2019, the petitioner (Aftab Ahmed Barlas) impugns the order dated 27.11.2019 passed by the Regulator (Trade Organization)/Director General of Trade Organizations (“D.G.T.O.”), allowing the appeal filed by respondent No.4 (Anjum Nisar, sole proprietor of M/s S.A. Trading Corporation (“S.A. Trading”)) against the concurrent orders dated 31.10.2019 and 08.11.2019 passed by the Secretary General, Federation of Pakistan Chambers of Commerce and Industry (“Secretary General, F.P.C.C.I.”) and the Election Commission of the Federation of Pakistan Chambers of Commerce and Industry (“Election Commission”), respectively. Furthermore, the D.G.T.O. directed that respondent No.4’s name be included in the final voters’ list for the F.P.C.C.I.’s elections-2020. Vide the said orders dated 31.10.2019 and 08.11.2019, the objections to the nomination of respondent No.4 as the representative of Pakistan Footwear Manufacturers Association (“P.F.M.A.”) on the General Body (“G.B.”) and Executive Committee (“E.C.”) of the F.P.C.C.I. were allowed and it was directed that respondent No.4’s name be removed from the voters’ list dated 22.10.2019 for the F.P.C.C.I.’s elections-2020.

3. Through writ petition No.4321/2019, the petitioner (Muhammad Sajid) also impugns the D.G.T.O.'s said order dated 27.11.2019.

4. The facts essential for the disposal of these petitions are that the list of members of the P.F.M.A. issued on 31.03.2019 did not include the name of S.A. Trading and / or respondent No.4. However, the voters' list of the members nominated by the trade bodies to the G.B. and E.C. of the F.P.C.C.I. included the name of the P.F.M.A. at serial No.272 of the said list issued by the F.P.C.C.I. with respondent No.4 as the nominee of the P.F.M.A. to the G.B. and E.C.

5. On 28.10.2019, Muhammad Sajid (the petitioner in writ petition No.4321/2019) filed objections before the Secretary General, F.P.C.C.I. to the nomination of respondent No.4 as a representative of the P.F.M.A. on the G.B. and E.C. of the F.P.C.C.I. on the ground that S.A. Trading had not completed two years of membership with the P.F.M.A. as required by Rule 15(1) of the Trade Organizations Rules, 2013 ("the 2013 Rules"). Vide order No.FPCCI.El.2020/2019/-4935, dated 31.10.2019, the Secretary General, F.P.C.C.I. allowed the said objections and held that since S.A. Trading was not a member of the P.F.M.A. on 31.03.2019, a representative of S.A. Trading was not eligible to be nominated by the P.F.M.A. to the G.B. and E.C. of the F.P.C.C.I. Furthermore, it was ordered that respondent No.4's name be excluded from the list of voters issued on 22.10.2019.

6. At this stage, it may be mentioned that Aftab Ahmed Barlas (the petitioner in writ petition No.4172/2019) had also filed objections on 26.10.2019 against respondent No.4's nomination by the P.F.M.A. as its representative on the G.B. and E.C. of the F.P.C.C.I. on grounds similar to the ones raised by Muhammad Sajid. Vide order No.FPCCI.Elections.2020/2019/-4934, dated 31.10.2019, Secretary General, F.P.C.C.I. allowed the said objections and it was directed that respondent No.4's name as a nominee of the P.F.M.A. on the G.B. and E.C. of F.P.C.C.I. for the F.P.C.C.I. elections-2020 be removed from the voters' list issued on 22.10.2019. In the said order, it was also mentioned that since S.A. Trading had paid the fee for fresh membership on 20.08.2019, it was not a member of the P.F.M.A. on 31.03.2019.

7. Against the said order dated 31.10.2019, respondent No.4 preferred an appeal under Rule 18(6) of the 2013 Rules before the Election Commission. Perusal of the said appeal (which is annexed at page 21 of writ petition No.4172/2019 filed by Aftab Ahmed Barlas) shows that the said appeal was filed against the order dated 31.10.2019 allowing the objections filed by Aftab Ahmed Barlas.

8. Vide order dated 08.11.2019, the Election Commission dismissed respondent No.4's appeal. In the said order, it was held *inter alia* that since S.A. Trading having membership No.B 753619, dated 23.08.2019, had paid its renewal fee on 20.08.2019, it was not a member of the P.F.M.A. on 31.03.2019. The Secretary General, F.P.C.C.I.'s decision to remove respondent No.4's name from the voters' list dated 22.10.2019 was upheld by the Election Commission.

9. On 12.11.2019, respondent No.4 preferred an appeal against the said order dated 08.11.2019 before the D.G.T.O. under Rule 18(7) of the 2013 Rules. Vide order dated 27.11.2019, respondent No.4's appeal was allowed and the concurrent orders dated 31.10.2019 and 08.11.2019 passed by the Secretary General, F.P.C.C.I. and the Election Commission, respectively, were set-aside and it was held that S.A. Trading had fulfilled the condition of being a member of a trade body having been issued a membership certificate by the P.F.M.A. on 23.08.2019 and could therefore nominate respondent No.4 as its representative on the G.B. and E.C. of the F.P.C.C.I. for the F.P.C.C.I. elections-2020.

10. The said order dated 27.11.2019 passed by the D.G.T.O. has been assailed in the instant writ petitions.

11. Learned counsel for the petitioners submitted that the membership of S.A. Trading with the P.F.M.A. ceased on 31.03.2019 due to the non-payment of dues/renewal fee; that the said dues were paid on 20.08.2019 and S.A. Trading's membership was renewed on 23.08.2019; that since S.A. Trading's membership with the P.F.M.A. had ceased on 31.03.2019, therefore its sole proprietor (respondent No.4) could not have been nominated by the P.F.M.A. as its representative on the G.B. and E.C. of the F.P.C.C.I. and therefore respondent No.4 was ineligible to cast a vote in the F.P.C.C.I.'s

elections-2020; that even if 20.08.2019 is not treated as the renewal date but as a date of fresh membership of S.A. Trading with the P.F.M.A., the requirement of one-year membership of S.A. Trading with the P.F.M.A. had not been fulfilled in the case at hand; and that Rule 15 of the 2013 Rules also applies to the elections of the F.P.C.C.I. since the latter is also a trade organization.

12. Learned counsel for the petitioners further submitted that the orders dated 31.10.2019 and 08.11.2019 passed by the Secretary General, F.P.C.C.I. and the Election Commission, respectively, were strictly in accordance with the law; that the D.G.T.O. erred by not appreciating that the F.P.C.C.I. was indeed a trade organization; and that respondent No.4, the sole proprietor of S.A. Trading, whose membership with the P.F.M.A. had expired on 31.03.2019, could not have been nominated by the P.F.M.A. as its representative on the G.B. and E.C. of the F.P.C.C.I. and therefore could not cast a vote in the F.P.C.C.I. elections-2020. Learned counsel for the petitioners prayed for the writ petitions to be allowed and for the impugned order dated 27.11.2019 passed by the D.G.T.O. to be set-aside.

13. On the other hand, learned counsel for respondent No.4 submitted that the definition of a “*trade organization*” given in Section 2(r) of the 2013 Act would not include the F.P.C.C.I.; that the definition of the term “*member of a trade organization*” given in Section 2(i) of the said Act means a firm and includes a proprietorship, an association of persons, a partnership, a company or multinational corporation engaged in trade, industry or services and enrolled as a member of a trade organization licensed under the said Act; that it is the P.F.M.A. which is a member of the F.P.C.C.I.; that it is not disputed that the P.F.M.A. did not suffer from any ineligibility to nominate its representative on the G.B. and E.C. of the F.P.C.C.I. to cast a vote in the F.P.C.C.I. elections-2020; that simply because S.A. Trading’s membership with the P.F.M.A. was renewed after 31.03.2019 (i.e. on 20.08.2019) would not make S.A. Trading’s sole proprietor (respondent No.4) ineligible to cast its vote in the F.P.C.C.I. elections-2020; that the F.P.C.C.I. is not a trade organization; that the 2013 Act and the 2013 Rules deal with the F.P.C.C.I. separately from a trade

organization; that the requirement of the renewal of a membership is only for the elections of the trade organization and not for the elections of the F.P.C.C.I.; that the day on which the voters' list was issued, the membership of S.A. Trading had been renewed; and that on account of such renewal, there was no legal infirmity in respondent No.4's nomination by the P.F.M.A. to cast a vote in the F.P.C.C.I.'s elections. Learned counsel for respondent No.4 prayed for the writ petition to be dismissed.

14. 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 petitions have been set out in sufficient detail in paragraphs 2 to 10 above and need not be recapitulated.

15. Although the term "*Federation*" has not been defined in the 2013 Act, Rule 2(i) of the 2013 Rules defines "*Federation*" to mean "*a Federation of Pakistan Chambers of Commerce and Industry organized on all-Pakistan basis to represent chambers, associations, women's chambers and chambers of small traders and associations of small traders.*" Rule 20(1) of the said Rules provides that the Federation shall comprise a president, a senior vice president, twelve vice-presidents, an executive committee, and a general body. The general body of the Federation is comprised of the representatives nominated by each licensed chamber, association, association of small traders, women's chamber and chamber of small traders subject to the conditions set out in Rule 20(2)(a) to (e). Rule 20(2)(b) provides that "*the representatives shall be members of the nominating trade organization.*" Rule 20(3) provides *inter alia* that the general body shall serve as the electoral college for the election of the office-bearers of the Federation. Rule 20(4) provides that the executive committee of the Federation shall comprise one out of the two representatives nominated on the general body by each trade organization.

16. As per the voters' list for the F.P.C.C.I. elections-2020, respondent No.4, the sole proprietor of S. A. Trading, was nominated by the P.F.M.A. as its representative on the G.B. and the E.C. of the

F.P.C.C.I. The vital question that needs to be answered is whether on account of the fact that S. A. Trading was not a member of the P.F.M.A. on 31.03.2019, respondent No.4 could have been nominated by the P.F.M.A. as its representative on the G.B. and E.C. of the F.P.C.C.I.

17. Rule 11(1) of the 2013 Rules sets out the conditions for the eligibility of a business concern for the grant or renewal of membership of any trade organization. Rule 11(4) provides that the membership of a trade organization shall be granted for a period of one year and shall expire on 31<sup>st</sup> day of March each year irrespective of the date of grant of membership. Rule 11(5) provides that the membership shall be renewable on annual basis subject to fulfillment of the following conditions:-

- “(a) payment of prescribed subscription within the time stipulated in the memorandum, which shall not be later than the 31<sup>st</sup> of March; and*
- (b) Proof of filing returns of income tax and sales tax if applicable, for the preceding year.”*

18. Section 10(7) of the 2013 Act is reproduced herein below:-

*“New members of the chambers and associations shall be eligible to vote on completion of two years of their enrollment and payment of all dues.*

*Provided that old members of the chambers and associations at the time of renewal of membership which has been discontinued due to non payment of subscription dues shall be eligible to vote on completion of one year of their re-enrollment and payment of all dues.”*

19. It is an admitted position that the prescribed subscription had not been paid by S.A. Trading by 31.03.2019. Therefore, by operation of Rule 11(4) of the 2013 Rules, its membership with the P.F.M.A. expired on 31.03.2019. It is for this reason that S.A. Trading's name was not included in the list of the P.F.M.A.'s members issued on 31.03.2019. It was not until 20.08.2019 that the prescribed subscription / annual renewal membership fee of Rs.12,000/- was paid by respondent No.4 on behalf of S.A. Trading. S.A. Trading's membership with the P.F.M.A. was restored on 23.08.2019 and a membership certificate was issued to it. It was after this that the voters' list issued by the F.P.C.C.I. on 29.11.2019 included the

P.F.M.A. with respondent No.4, the sole proprietor of S.A. Trading as its representative on the G.B. and E.C. of the F.P.C.C.I.

20. The conjoint reading of the proviso to Section 10(7) of the 2013 Act read with Rule 11(4) and (5) of the 2013 Rules shows that if a member of a trade organization has not paid the prescribed subscription by the deadline of 31<sup>st</sup> of March of any given year, the membership of such member would be discontinued. The membership of such member can, however, be renewed on the payment of the prescribed subscription fee after the 31<sup>st</sup> of March but such member would be ineligible to vote until the completion of one year of the renewal of its membership and the payment of all dues.

21. In the case at hand, on 31.03.2019, the membership of S.A. Trading with the P.F.M.A. discontinued on account of non-payment of the prescribed subscription fee. Although S.A. Trading paid the prescribed subscription fee on 20.08.2019 and its membership with the P.F.M.A. was renewed on 23.08.2019, such renewal would not *ipso facto* make S.A. Trading its representative eligible to be nominated by the P.F.M.A. on the G.B. and E.C. of the F.P.C.C.I. or to vote in the elections of the F.P.C.C.I. until the expiry of one year of the date of the renewal of S.A. Trading's membership and the payment of the prescribed subscription fee. The very purpose of a representative of a member of a trade organization to be nominated by the trade organization on the G.B. of the F.P.C.C.I. is to become a part of the electoral college and be eligible to cast a vote in the F.P.C.C.I. elections. Since the proviso to Section 10(7) of the 2013 Act read with Rule 11(4) and (5) of the 2013 Rules makes the renewal of membership of a trade organization's member on payment of the prescribed subscription fee after the 31<sup>st</sup> of March subject to the disability of making such member ineligible to vote for a period of one year and since a period of one year had not lapsed when the voters' list was issued by the F.P.C.C.I., the inclusion of S.A. Trading and / or respondent No.4's name in the said list was in stark violation of the said provisions. The D.G.T.O., while allowing respondent No.4's appeal, appears to have ignored the mandate in the proviso to Section 10(7) of the 2013 Act read with Rule 11(4) and (5) of the 2013 Rules.

22. The D.G.T.O. also referred to Rule 20(2)(b) of the 2013 Rules which provides *inter alia* that the G.B. of the F.P.C.C.I. shall comprise of the representatives nominated by each licensed, chamber, association, association of small traders, women's chamber, and chamber of small traders subject to the condition that the representatives shall be a member of the nominating trade organization. The D.G.T.O. gave a direction for the inclusion of respondent No.4's name in the final voters' list in the F.P.C.C.I.'s elections-2020 after holding that no period for the enrollment of a member of a trade organization was stipulated in Rule 20(2)(b) of the 2013 Rules and that S.A. Trading had been granted a membership certificate on 23.08.2019 by the P.F.M.A. Indeed, S.A. Trading had been granted a membership certificate on 23.08.2019 after its membership had been discontinued due to non-payment of the prescribed subscription fee. However, the requirement in Rule 20(2)(b) of the 2013 Rules could not have been read in isolation and most definitely not independently from the requirement in the *proviso* to Section 10(7) of the 2013 Act. Since the renewal of S.A. Trading was with a disability which is imposed by operation of law (i.e. the *proviso* to Section 10(7) of the 2013 Act read with Rule 11(4) and (5) of the 2013 Rules), I am of the view that the D.G.T.O. decided respondent No.4's appeal wrongly and therefore went outside the jurisdiction conferred by law. In the case of Utility Store Corporation Vs. Punjab Labour Appellate Tribunal etc (PLD 1987 SC 447), speaking for the Hon'ble Supreme Court, the Hon'ble Mr. Justice Nasim Hassan Shah *inter alia* held as follows:-

*"It is not right to say that the Tribunal, which is invested with jurisdiction to decide a particular matter, has the jurisdiction to decide it 'rightly or wrongly' because the condition of the grant of jurisdiction is that it should decide the matter in accordance with the law. When the Tribunal goes wrong in law, it goes outside the jurisdiction conferred on it because the Tribunal has the jurisdiction to decide rightly but not the jurisdiction to decide wrongly."*

23. Law to the said effect has also been laid down in the cases of Haq Nawaz Khan Vs. Rab Nawaz etc (1992 SCMR 993), Arbab Ali etc Vs. Noor Bakhsh etc (2003 CLC 1670), Muhammad Shafique Khan Vs. Saeed Akhtar Khan etc (2003 MLD 951), Mian Arif Mehmood Vs. Mst.



Tanvir Fatima (PLD 2004 Lahore 316), and Major (Retd.) Shabbir Ahmad Vs. Election Tribunal for Rawalpindi, District Attock (2003 YLR 613).

24. Rule 15(1) of the 2013 Rules provides that subject to the provisions of the Section 10 of the 2013 Act, the eligibility of a member of a trade organization to vote at the elections of the trade organization shall be subject to the following conditions:-

*“(a) the member has completed two years of valid membership of the trade organization as on the date of announcement of election schedule by the executive committee of the trade organization;*

*Provided that old members shall be eligible to vote on completion of one year of their enrollment and payment of all dues; and*

*(b) the member has fulfilled the conditions of membership and renewal thereof of the respective trade organization under rule 11.”*

25. The D.G.T.O., while allowing respondent No.4's appeal, has held that the requirement in Rule 15(1)(a) of the 2013 Rules, completion of two years of valid membership for new members and completion of one year of enrollment and payment of all dues for old members, for their eligibility to vote does not apply to the nominations for the elections of the F.P.C.C.I. This finding proceeds on the assumption that the F.P.C.C.I. is not a trade organization. The said finding also ignores the explicit disability placed by the *proviso* to Section 10(7) of the 2013 Act on a member whose membership is discontinued due to non-payment of the prescribed subscription fee to be ineligible to vote until the completion of one year of the renewal of its membership on payment of such fee.

26. The F.P.C.C.I. is not excluded from the definition of “trade organization” given in Section 2(r) of the 2013 Act. Furthermore, Section 3(2)(a) of the said Act provides *inter alia* that no license shall be granted for registration to a trade organization unless it is the F.P.C.C.I. organized on all Pakistan basis to represent Chambers and Associations provided that a license for registration as F.P.C.C.I. shall not be granted to more than one trade organization. This provision shows that a license for registration as F.P.C.C.I. is granted to a trade

organization. With the grant of such a license for registration, the F.P.C.C.I. will not lose its status of a trade organization.

27. Section 11 of the 2013 Act provides *inter alia* that the tenure of the office bearers of all trade organizations shall be one year. Furthermore, it provides that in the case of the F.P.C.C.I., the tenure shall be from the 1<sup>st</sup> day of January to the 31<sup>st</sup> day of December whereas “in case of all other trade organizations” from the 1<sup>st</sup> day of October to the 30<sup>th</sup> day of September. The contention of the learned counsel for respondent No.4 that the F.P.C.C.I. is not a trade organization is not in consonance with the language employed in Section 11 of the 2013 Act which fixes the tenure of “all trade organizations.” The use of the words “all other trade organizations” in Section 11(1)(b) of the said Act implies that the F.P.C.C.I. is indeed a trade organization but the one year tenure of its office bearers starts on a different date from those of “all other trade organizations.”

28. Article 15 of the F.P.C.C.I.’s Articles of Association provides that the “*Members of the Electoral College shall be eligible to vote only if they fulfill the conditions laid down in Section 10 of the Trade Organizations Act, 2013 and the Trade Rules thereunder.*” Even if it is assumed for the sake of argument that the F.P.C.C.I. was not a trade organization, the requirements in Section 10 of the 2013 Act as well as the provisions of the 2013 Rules have been applicable by Article 15 *ibid* to the eligibility of the members of the electoral college for the F.P.C.C.I.’s election. This appears to have been overlooked by the D.G.T.O. while allowing respondent No.4’s appeal.

29. In view of the above, the instant petitions are allowed; the impugned order dated 27.11.2019 passed by the D.G.T.O. is set-aside; it is declared that since on account of non-payment of the prescribed subscription fee by 31.03.2019, the membership of S.A. Trading with the P.F.M.A. stood discontinued by operation of law (i.e. the proviso to Section 10(7) of the 2013 Act read with Rule 11(4) and (5) of the 2013 Rules) and since a period of one year had not been completed after the renewal of S.A. Trading’s membership on 23.08.2019, the renewal of its membership did not make S.A. Trading’s proprietor (i.e. respondent No.4) eligible to vote as a representative/nominee of the

P.F.M.A. in the F.P.C.C.I.'s elections-2020; and consequently, the concurrent orders dated 31.10.2019 and 08.11.2019 passed by the Secretary General, F.P.C.C.I and the Election Commission, respectively, are restored with all legal consequences. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2020**

**(JUDGE)**

*Qamar Khan\**

**APPROVED FOR REPORTING**

*Uploaded By: Engr. Umer Rasheed Dar*