

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A.No.209 of 2020
Nestle Pakistan Limited

Versus

The Registrar Trade Unions and others

Date of Hearing: 23.09.2020
Appellant by: M/s Farooq Amjad Meer and Raheel Aslam,
Advocates
Respondents by: Mr. Muhammad Mazher Javed, Advocate for
respondent No.2

MIANGUL HASSAN AURANGZEB, J:- Through the instant intra Court appeal the appellant, Nestle Pakistan Limited, impugns the judgment dated 11.08.2020 passed by the learned Judge-in-Chambers dismissing writ petition No.2089/2020 filed by the appellant against the consolidated order dated 20.07.2020 passed by the Registrar Trade Unions (“R.T.U.”) to the extent whereby the appellant’s application under Section 11 of the Industrial Relations Act, 2012 (“I.R.A.”) seeking the cancellation of the registration of Mohib Employees Union (respondent No.2) was dismissed.

2. The facts essential for the disposal of this appeal are that vide order dated 16.12.2016 passed by the Joint Registrar, respondent No.2 was registered as a trade union in the appellant’s establishment. The said order dated 16.12.2016 was assailed by the appellant in writ petition No.1400/2017 before the Hon’ble Lahore High Court. Vide order dated 17.10.2019, the said writ petition was dismissed on the ground that neither a resolution of the appellant’s Board of Directors authorizing the filing of the writ petition nor the appellant’s Articles and Memorandum of Association had been filed with the said petition. Against the said order dated 17.10.2019, the appellant has preferred Civil Petition No.3978/2019 which is still pending adjudication before the Hon’ble Supreme Court.

3. After the dismissal of writ petition No.1400/2017, the appellant filed an application under Section 11 of the Industrial Relations Act, 2012 (“I.R.A.”) seeking the cancellation of respondent No.2’s registration as a trade union in the appellant’s establishment. Vide order dated

27.01.2020, the R.T.U. mandated the Deputy Registrar, N.I.R.C., Multan Bench, to inquire into the veracity of the allegations levelled by the appellant in its application. The Deputy Registrar, N.I.R.C. made two field visits to the appellant's factory at Kabirwala and conducted proceedings for three days at the N.I.R.C., Multan. The Deputy Registrar, N.I.R.C. had admittedly afforded an opportunity of hearing to the appellant as well as to respondent No.2.

4. In the inquiry report dated 26.02.2020, the Deputy Registrar, N.I.R.C. observed that no finding could be given regarding the registration of respondent No.2 since writ petition No.1400/2017 filed by the appellant against the registration of respondent No.2 had been dismissed by the Hon'ble Lahore High Court and that the matter was *sub judice* before the Hon'ble Supreme Court.

5. Vide order dated 20.07.2020, the R.T.U. dismissed the appellant's application for the cancellation of respondent No.2's registration as a trade union on the basis of the said report dated 26.02.2020. The said order dated 20.07.2020 was a consolidated order disposing of two applications under Section 11 of the I.R.A. filed by the appellant seeking the cancellation of the registration of respondent No.2 and Pak Food Employees Union. Since the remedy of an appeal under Section 12 of the I.R.A. is not available to an employer, the said order dated 20.07.2020 was assailed by the appellant in writ petition No.2089/2020 before this Court. Vide judgment dated 11.08.2020, the said writ petition was dismissed. The appellant has assailed the said judgment dated 11.08.2020 in the instant intra Court appeal.

6. Learned counsel for the appellant, after narrating the facts leading to the filing of the instant appeal, submitted that the appellant is a trans-provincial establishment in which more than five trade unions have been registered; that Section 8(2)(b) of the I.R.A. provides, in effect, that a trade union of workmen shall not be entitled to registration unless there are two or more registered trade unions in an establishment and it has as its members not less than one-fifth of the total number of workmen employed in such an establishment; that respondent No.2 was the 7th trade union registered by the Joint Registrar; that since there are already more than five registered trade unions in the appellant's

establishment, the question of respondent No.2 having as its members one-fifth of the total members of workmen employed in the appellant's establishment does not arise; that respondent No.2's registration was liable to be cancelled on account of violation of the requirements of Section 8(2)(b) of the I.R.A.; and that the scheme of the I.R.A. does not permit more than five trade unions in any establishment or industry.

7. He further submitted that since the appellant is a trans-provincial establishment, the R.T.U. was not empowered under the provisions of the I.R.A. to grant registration to an industry-wise trade union in the appellant's establishment; that although Section 5 of the I.R.A. empowers the R.T.U. to register trade unions, an industry-wise trade union in a trans-provincial establishment can only be registered by the National Industrial Relations Commission ("N.I.R.C.") in terms of Section 54(b) of the said Act; that in writ petition No.2089/2020, the appellant/petitioner did not conceal any material fact; and that the R.T.U. had passed the order dated 20.07.2020 whereby the appellant's application under Section 11 of the I.R.A. was dismissed without affording an opportunity of a hearing to the appellant. Learned counsel for the appellant prayed for the appeal to be allowed and for the impugned judgment dated 11.08.2020 to be set-aside.

8. On the other hand, learned counsel for respondent No.2 submitted that the members of respondent No.2/union are not less than one-fifth of the total number of workmen; that after the appellant filed an application under Section 11 of the I.R.A. seeking the cancellation of the registration of respondent No.2, the R.T.U. mandated the Deputy Registrar, N.I.R.C., Multan Bench to inquire into the matter; that on 26.02.2020, the Deputy Registrar, N.I.R.C. submitted a detailed report wherein it was observed that respondent No.2 was validly registered as a trade union; that in the proceedings before the Deputy Registrar, N.I.R.C., the appellant was represented through a counsel; that the said report dated 26.02.2020 was not challenged by the appellant before any forum, hence the same had attained finality; that the order dated 20.07.2020 passed by the R.T.U. is in accordance with the said report dated 26.02.2020; and that since the appellant had been afforded an opportunity of a hearing by the Deputy Registrar, N.I.R.C., there was no

need for the R.T.U. to provide an opportunity of a hearing to the appellant.

9. He further submitted that the appellant had preferred writ petition No.1400/2017 before the Hon'ble Lahore High Court challenging the order dated 16.12.2016 passed by the Joint Registrar whereby respondent No.2 was registered as a trade union in the appellant's establishment; that vide order dated 17.10.2019, the said writ petition was dismissed as not maintainable; that although the appellant has preferred Civil Petition No.3978/2019 before the Hon'ble Supreme Court against the said order dated 17.10.2019, the same has not been decided as yet; that the matter regarding the registration of respondent No.2 as a trade union in the appellant's establishment became a closed chapter and could not be reopened through an application under Section 11 of the I.R.A.; that the Deputy Registrar, N.I.R.C., in his report dated 26.02.2020, had also made reference to the dismissal of writ petition No.1400/2017; that the learned Judge-in-Chambers was correct in observing that the appellant had concealed a material fact as to the filing of another writ petition against the same order of the R.T.U.; and that the appellant has embroiled respondent No.2 in unnecessary litigation only to obstruct the holding of a referendum for the determination of the Collective Bargaining Agent. Learned counsel for respondent No.2 prayed for the appeal to be dismissed.

10. We 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 appeal have been set out in sufficient detail in paragraphs 2 to 5 above and need not be recapitulated.

11. As mentioned above, the appellant had assailed the order dated 16.12.2016, whereby the Joint Registrar had allowed respondent No.2's application for registration as a trade union in the appellant's establishment before the Hon'ble Lahore High Court in writ petition No.1400/2017. Vide order dated 17.10.2019, the said writ petition was dismissed as not maintainable. Civil Petition No.3978/2019 against the said order dated 17.10.2019 is pending adjudication before the Hon'ble Supreme Court.

12. The Deputy Registrar, N.I.R.C., who had been appointed as the Inquiry Officer by the R.T.U., in his inquiry report dated 26.02.2020, had observed that since the matter regarding the registration of respondent No.2 was *sub judice*, no finding could be given regarding the legality of respondent No.2's registration. This observation formed the basis for the dismissal of the appellant's application under Section 11 of the I.R.A. seeking the cancellation of respondent No.2's registration.

13. The vital question that needs to be answered is whether the mere filing of a writ petition against the order whereby the Joint Registrar granted registration to respondent No.2 or even the dismissal of such a petition could be enough to dismiss the appellant's application under Section 11 of the I.R.A. The Hon'ble Lahore High Court, vide order dated 17.10.2019, had dismissed writ petition No.1400/2017 as not maintainable without an adjudication on the merits of the case. Vide the said order, the appellant's writ petition was dismissed on account of not having been accompanied with a board resolution authorizing the filing of the writ petition or the appellant's Articles and Memorandum of Association. The Hon'ble Lahore High Court had certainly not held that respondent No.2's registration as a trade union was valid.

14. Section 11 of the I.R.A. confers power on the R.T.U. to cancel the registration of a trade union on any of the grounds enumerated in Section 11(1)(a) to (g) of the I.R.A. Section 11(1)(a) of the I.R.A. provides that the registration of a trade union may be cancelled by the R.T.U. if the trade union has *"contravened or has been registered in contravention of any of the provisions of the I.R.A. or the rules."* The requirements for the registration of a trade union are set out in Section 8 of the I.R.A. Section 8(2)(b) of the I.R.A. is reproduced herein below:-

"(2) Without prejudice to the provisions of subsection (1), a trade union of workmen shall not be entitled to registration under this Act--

(a)

(b) where there are two or more registered trade unions in the establishment, group of establishments or industry with which the trade union is connected, unless it has as its members not less than one-fifth of the total number of workmen employed in such establishment, group of establishments or industry, as the case may be.

(Emphasis added)

15. Section 8(2)(b) of the I.R.A. makes it clear that if the members of a trade union are less than one-fifth of the total number of workmen employed in an establishment, it shall not be entitled to registration. The conjoint reading of Section 11 read with Section 8(2)(b) of the I.R.A. causes us to hold that the proceedings for the cancellation of a trade union may be initiated by the R.T.U. in accordance with Section 11(2) of the I.R.A. by submitting an application to the N.I.R.C. praying for permission to cancel the registration of a trade union where the membership of a trade union falls less than one-fifth of the total number of workmen employed in an establishment.

16. Even if it is assumed that a trade union satisfied all the requirements for registration at the stage when it was registered or that a trade union had been validly registered by the R.T.U. or the Joint Registrar, such registration can nonetheless be cancelled if the registered trade union is subsequently found to be in contravention of the requirements set out in Section 11 of the I.R.A. For instance where such a registered trade union obtained less than 10% of the total votes polled in an election for the determination of a Collective Bargaining Agent or is not a contestant in such election (Section 11(1)(d)), or where it fails to submit its annual returns to the Registrar as required under the I.R.A. or the rules (Section 11(1)(e)), or where it contravenes any of the provisions of its constitution (Section 11(1)(f)), etc.

17. Where at any stage after the registration of a trade union, its membership falls short of one-fifth of the total number of workmen employed in an establishment, it would be obligatory on the R.T.U. to initiate the process for the cancellation of such trade union in accordance with Section 11(2) of the I.R.A. The mere fact that a trade union having less than one-fifth of the total number of workmen employed in an establishment as its members is registered does not in any manner prevent the employer or a rival trade union from bringing such fact to the notice of the R.T.U. so that proceedings for the cancellation of the registration of such defaulting trade union are initiated. There is no explicit prohibition in the I.R.A. on an employer to file an application seeking the cancellation of a trade union's registration on the grounds set out in Section 11 of the I.R.A. The

requirement under Section 8(2)(b) of the I.R.A. for a trade union to have not less than one-fifth of the total number of workmen employed in an establishment as its members is a continuing obligation and not just confined to the stage of the registration of the trade union. In other words, the R.T.U. can initiate the process for the cancellation of the registration of a trade union at any stage when it comes to his notice that a trade union is functioning or operating in contravention of the said requirement.

18. The argument of the learned counsel for the appellant is that since there are already more than five registered trade unions in the appellant's establishment, it is not possible for respondent No.2 to have one-fifth of the total number of workmen employed in the appellant's establishment as its members. This argument proceeds on an assumption that the five or more trade unions registered before respondent No.2 are fully compliant with the requirement in Section 8(2)(b) of the I.R.A.

19. The second *proviso* to Section 3(a) of the I.R.A. provides that no worker shall be entitled to be a member of more than one trade union at any one time and on joining another union, the earlier membership shall automatically stand cancelled. If a trade union is able to satisfy the R.T.U. that its members are not less than one-fifth of the total number of workmen of an establishment, it can be registered regardless of the fact that there are already five registered trade unions in the establishment. This scenario would place an obligation on the R.T.U. to require the existing trade unions to satisfy him as to their compliance with the requirement in Section 8(2)(b) of the I.R.A. This factual inquiry cannot be carried out by this Court in its Constitutional jurisdiction. It is the R.T.U. appointed by the Federal Government under Section 4 of the I.R.A. who has to ensure that a registered trade union remains fully compliant with the requirement of the I.R.A. and the rules made thereunder.

20. Now, as mentioned above, the order dated 20.07.2020 passed by the R.T.U. is entirely based on the inquiry report dated 26.02.2020. In the said inquiry report, there is no finding to the effect that respondent No.2 had fulfilled the requirements in Section 8(2)(b) of the I.R.A. The

appellant, in its application under Section 11 of the I.R.A., had clearly pleaded that respondent No.2 “*does not fulfill the requirement of one-fifth of membership of workers as required by Section 8 of the IRA 2012.*” Since the proceedings for the cancellation of a trade union’s registration can be initiated under Section 11(2) of the I.R.A., if the R.T.U. determines that the members of the trade union are not less than one-fifth of the total number of workmen employed in an establishment, it was obligatory on the R.T.U. to have addressed this crucial question regardless of the fact that the matter whether respondent No.2 was lawfully registered was *sub judice*.

21. We have read with great interest and keenness the impugned judgment dated 11.08.2020 passed by the learned Judge-in-Chambers. In the said judgment, it has been held *inter alia* that respondent No.2 had been validly registered as a trade union since it had completed all the formalities of the law. That may well have been so. But what the R.T.U. had to determine in the proceedings pursuant to the appellant’s application under Section 11 of the I.R.A. was whether respondent No.2’s present membership was not less than one-fifth of the total number of workmen employed in the appellant’s establishment, and not whether at the time of its registration its membership was of the requisite strength.

22. We also cannot bring ourselves to agree with the finding of the learned Judge-in-Chambers that the matter regarding the registration of a trade union is between the trade union and the Registrar or that the employer establishment had no *locus standi* to file an application for the cancellation of a trade union. As observed herein above, the provisions of the I.R.A. place no embargo on the employer to file such an application. The said finding of the learned Judge-in-Chambers is also contrary to the law laid down by the Division Bench of this Court in the judgment dated 09.04.2020 passed in intra Court appeal No.391/2019 wherein it had been held *inter alia* that the employer could file an application under Section 11 of the I.R.A. for the cancellation of a trade union’s registration on the ground that 75% of its members are not workmen engaged or employed in the establishment as required by Section 8(1)(d) of the I.R.A.

23. As for the contention of the learned counsel for the appellant that the R.T.U. did not have the jurisdiction to register a trade union in a trans-provincial establishment, this was not agitated by the appellant in its application under Section 11 of the I.R.A. As regards the contention of the learned counsel for respondent No.2 that the appellant had concealed the fact as to the filing of writ petition No.2089/2020 in the subsequently filed writ petition No. 2127/2020, we are of the view that whether or not the appellant had concealed a material fact in writ petition No. 2127/2020 will be for the Bench hearing said writ petition to determine.

24. In view of the above, the instant appeal is allowed and the impugned judgment dated 11.08.2020 is set-aside. Writ petition No.2089/2020 is allowed and the order dated 20.07.2020 passed by the R.T.U. to the extent of dismissing the appellant's application under Section 11 of the I.R.A. seeking the cancellation of respondent No.2's registration as a trade union is set-aside. The matter is remanded to the learned R.T.U. with the direction to determine as to whether at present respondent No.2 fulfills the requirement of having membership of not less than one-fifth of the total number of the workmen employed in the appellant's establishment as required by Section 8(2)(b) of the I.R.A. Since the holding of the referendum has been much delayed, the R.T.U. is expected to decide the said application within a period of two weeks from the date of the receipt of this order after affording an opportunity of a hearing to the appellant and respondent No.2.

(LUBNA SALEEM PERVEZ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2020

(JUDGE)

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*

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