

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

“W.P No.1400 of 2020”

Phoenix Armour Workers Union etc
Versus
National Industrial Relation Commission through its Chairman &
others

Petitioners By: Sardar Tariq Hussain, Advocate.
Respondents by: M/s Shahid Mehmood Mehar & Faiza
Naseer Ch. Advocate.
Mr. Nazar Hussain Shah, AAG.
Date of hearing: 16.07.2020

Ghulam Azam Qambrani, J: Through this petition, the petitioner has invoked the jurisdiction of this Court, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

“It is, therefore, respectfully prayed that instant writ petition may kindly be accepted and impugned order dated 25.2.2020 passed by learned Single Member may kindly be set aside in the interest of justice.

Any other relief, which this Hon’ble Court may deem fit and proper, be awarded in favour of the petitioners.”

2. Brief facts as narrated in the petition are that internal elections of the petitioners’ union were held, and petitioners were declared “returned candidates” vide order dated 02.09.2018. Subsequently, notification dated 01.03.2019 was issued by respondent No.1 regarding change of office bearer. Respondents No.6 to 11 challenged the above mentioned internal election proceedings and change of office bearer, by filing appeals No.12B(90) of 2018, 12-B(12)19 and 12(b)(15)19, which was partly accepted vide consolidated Judgment dated 25.02.2020 by the

learned Single Bench- NIRC and case was remanded back to Registrar Trade Union (RTU) for decision afresh, hence instant petition.

3. Learned counsel for the petitioners contended that the Registrar Trade Union passed an order dated 10.04.2013, for holding fresh election of the Union and respondent No.4 was appointed as Authorized Officer to conduct the same; that the said order was challenged by respondent No.6, but the learned Appellate Bench of NIRC dismissed the appeal vide order dated 06.07.2017 as meritless. Thereafter, he filed W.P No. 3654/ 2017 before this Court which met the same fate, but learned Single Bench has ignored this important aspect of the case and passed an order which is not sustainable in the eyes of law. Further contended that respondent No.6 filed a complaint regarding election proceedings which was entrusted to the Chairman-learned Member of NIRC but respondent No.6 never bothered to appear before learned Member after filing the complaint and thereafter learned Member dismissed the same and this vital aspect has not been taken into consideration. Learned counsel for the petitioners next contended that it is incumbent upon Registrar to refuse to register the change of office bearer if it is in contravention of any of the provisions of the Act or in violation of the Constitution of the Trade Union and in absence of the refusal by Registrar to register change of office bearer it would be presumed that no fault was found by Registrar with change of office bearer. Next contended that the internal election of the petitioners union was held after six years by the order of Registrar under the law, enshrined in Article 129 of Qanoon-e-Shahadat, great sanctity has been attached to the judicial proceedings and official acts which cannot be challenged on the basis of wild allegation, but this principle of law has also not been appreciated by the learned Single Member Bench and passed the order against the law. Lastly, contended that order of learned Single Member is based on surmises and conjectures, hence liable to be set aside.

4. Learned counsel for the respondents opposed the contentions of the petitioners and stated that the petition is not maintainable as the petitioner has no authority to file petition on behalf of union; that out of 24 officer bearers, only two have assailed the order passed by the learned Chairman NIRC, Islamabad, hence not maintainable; that petition is barred by law as proper and necessary parties are missing; that the internal election of the union was held by respondent No.3 through respondent No.4 as authorized officer being Deputy Registrar NIRC, whereas as per law it was required that the respondent No.3 himself supervise the proceedings; that respondent No.4 issued election result dated 02.09.2018 which was beyond his jurisdiction. Further submitted that the respondents several times raised certain objections including written objections before respondent No.3 through TCS receipt No.40600396090 dated 12.09.2018, duly received by Shakeel official of respondent No.1. Respondent No.6 has also lodged complaint before the Worthy Chairman-NIRC against the malpractice committed by respondent No.4 & others, through TCS receipt No.40600163711 dated 19.09.2019, which was entrusted to the learned Member M. Itifaq Abbasi, who issued notice through Commission on 16.10.2018 for 18.10.2018; that in reply to the said notice the respondent and their counsel requested for adjournment through post but thereafter they did not receive any notice in the said inquiry but the respondent received order dated 06.11.2018 holding that answering respondents were avoiding appearance, which is against the facts. Further stated that without hearing the objections filed by the answering respondents, learned RTU vide letter dated 01.03.2019 issued approval without mentioning any reasoning by stating "agreed" and an appeal was filed against the said letter which was accepted as it was against Article 2-A of the Constitution of Pakistan. It is further submitted that the respondents had raised objections on the appointment of Authorized Officer but without deciding the objections, the election was conducted illegally; that under Section 9 of the IRA, 2012 the elections of the union be held under the supervision of the RTU; that the appeal

filed by the answering respondent before the NIRC against the result dated 02.09.2018. Lastly, argued for dismissal of the instant.

5. Arguments heard, record perused.

6. Minute perusal of the record reveals that internal election of Phoenix Armour Workers Union in the establishment of the Phoenix Armour (Pvt.) Limited were held on 02.09.2018 under the supervision of the Authorized Officer (Respondent No.4), who submitted his report of election on 19.09.2018 to the Registrar Trade Union (Respondent No.3), who approved the same on 01.03.2019. Respondent No.6, Iftikhar Ahmad Abbasi, who represents Abbasi Group, challenged the tentative election result dated 02.09.2018 issued by the Authorized Officer through appeal No.12B(90)/2018, he further challenged the order of approval, passed by the Registrar Trade Union dated 01.03.2019 through appeal No.12B(12)/19 before the NIRC. Respondents No.10 and 11, Arif Group also filed an appeal No.12B(15)/19 before the NIRC claiming themselves to be the returned candidates.

7. Earlier both the groups submitted applications to the Registrar Trade Union claiming themselves to be the General Secretary of the Union, who entrusted the matter to respondent No.4, Authorized Officer for conducting fresh elections vide order dated 10.04.2017, as a result whereof, the elections were held on 02.09.2018. The Authorized Officer issued the tentative election result declaring Arif Group as winning group. Thereafter, the above mentioned appeals were filed before the NIRC.

8. Under Section 9(6) of the Industrial Relations Act, 2012 the election of the trade union are to be conducted under the supervision of the Registrar Trade Union. For ready reference Section 9(6) is reproduced hereunder:-

"In case there is a dispute in relation to the change of officers of a trade union, or any trade union is aggrieved by the refusal of the Registrar under sub-section (4), the Registrar may, after satisfying himself that a dispute exists, hold fresh elections under his supervision."

From the above, it is clear that it is Registrar Trade Union, who would conduct the election under his supervision, however, he may appoint officers/ officials for his assistance in the election process, whereas in the instant case, respondent No.4 was appointed as Authorized Officer by the Registrar Trade Union to conduct the elections, who conducted the internal election on 02.09.2018, submitted a tentative result and in this respect also submitted a report on 19.09.2018 to the Registrar Trade Union, who approved the same on 01.03.2019, upon which the Abbasi group submitted various applications to the Registrar Trade Union and also to the Chairman of the Commission against the election proceedings. The application submitted to the Chairman of the Commission was entrusted to the Member of the Commission for holding an inquiry in the matter but the said application was filed on account of non-appearance on 06.11.2018. The objections petition submitted to the Registrar Trade Union on 12.09.2018 was not decided and the order of the Authorized Officer dated 02.09.2018 and his report dated 19.09.2018, which was thereafter approved by the Registrar Trade Union on 01.03.2019 were challenged before the NIRC.

9. Examination of the record further shows that Abbasi group raised number of objections on the election process, against the Authorized Officer and also against the staff members, who conducted the elections, well before the submission of report by the Authorized Officer on 19.09.2018 and before 01.03.2019, when a non-speaking order of approval of the election result was issued by the Registrar Trade Union, but the said objections were not decided. Order of the Registrar Trade Union "approved" is not a speaking order whereas the Registrar Trade Union should have passed a comprehensive order after applying its mind as the executive of the union is of much importance as in case of union becoming Collective Bargaining Agent and the officers so elected are to perform the functions of CBA on behalf of all the workers in the establishment. After addition of Section 24-A in the General Clauses Act, 1897, it is the duty of the authority to pass an order

with reasons after application of mind. Reliance in this regard is placed upon the case reported as "Fasih-Ud-Din Khan and others Vs. Government of Punjab and others" (2010 SCMR 1778), as such, the order passed by the Registrar Trade Union, is not sustainable in the eyes of law.

10. Further, the application submitted by the Abbasi group on 05.09.2018 raising certain objections with regard to the counting during the internal elections whereby they claim that their group obtained more votes than the Arif group, which application was dismissed by the Authorized Officer whereas the Registrar Trade Union was competent enough to conduct the internal election of the union as per Section 9(6) of IRA, 2012, as such, the Authorized Officer was not competent to pass any order on the objections raised by the Abbasi group. Keeping in view all the facts and circumstances, the Chairman, NIRC, rightly accepted the appeal No.12B(12)/2019 and set aside the order dated 01.03.2019, passed by the Registrar Trade Union as it was not a speaking order. Furthermore, the order passed by the Authorized Officer, on the objections raised by the Abbasi group with regard to recounting of votes, was also set aside as the same was passed beyond the capacity and also that he was not competent to pass the said order and the case was rightly remanded to the Registrar Trade Union for decision afresh through a speaking order with application of mind, in the light of the objections raised by the Abbasi Group. Whereas the appeal No.12B(15)/2019 filed by respondents No.10 & 11, was allowed only to the extent and terms of appeal No.12B(12)/19 and the appeal No.12B(90)/2018 was disposed of in the light of para No.16 of the said judgment.

11. For what has been discussed above, learned counsel for the petitioners has been failed to point out any illegality, calling for interference by this Court in the impugned judgment passed by the Chairman, NIRC, dated 25.02.2020. This writ petition having no merits, is dismissed.

12. Before parting with the matter, the Registrar Trade Union is directed to decide the matter afresh in terms of judgment dated 25.02.2020, after providing proper opportunity of hearing to all concerned and pass an appropriate order strictly in accordance with law, through a speaking order.

(Ghulam Azam Qambrani)
Judge

Announced in Open Court, on this 29th day of July, 2020.

Judge

S. Akhtar