

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 565 of 2020

All Pakistan Printing Corporation

VS

Member, National Industrial Relation Commission, Islamabad, etc

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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28.07.2020.

**Mr. Muhammad Umair Baloch, Advocate
for the petitioner.**

**Mr. Mushtaq Hussain Bhatti, Advocate
for respondents.**

The petitioner through instant petition has invoked constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan and has sought the following prayer:-

“In view of the above, it is, therefore, respectfully prayed that the instant writ petition may kindly be accepted, impugned order dated 11.02.2020 may kindly be set aside and respondents may kindly be restrained from holding referendum till the final decision of the case of petitioner before respondent No. 1 in the supreme interest of justice.”.

2. Facts as per petition are that petitioner, a union certified as collective bargaining agent of workers M/s Printing Corporation of Pakistan (Pvt.) Limited (*hereinafter referred to as Corporation*) filed application u/s 62 of the Industrial Relations Act, 2012, (*hereinafter referred to as IRA, 2012*) for determination of three Collective Bargaining Units (*hereinafter referred to as CBU*) of the Corporation before the National Industrial Relations Commission (*hereinafter referred*

to as NIRC) registered as Case No. 19(01)/2019, pending till date. The petitioner was certified as CBA for a period of two years *w.e.f.* 09.03.2017 till 08.03.2019. After the expiry of the term of the petitioner as CBA an application for conducting referendum was submitted and the authorized officer in this regard was appointed by the RTU, vide order dated 24.09.2019. The petitioner filed application bearing C.M.A. No. 7A(15)/2020, before the Commission to stop or prohibit the proceedings to determine the CBA for the next term. The said application was dismissed, vide order dated 11.02.2020, by Respondent No. 1, whereby, holding that Commissioner has *no jurisdiction to grant stay in any case other than the one initiated on reference made by the Federal Government* placing reliance on the judgment re: *Suit Gas Employees Union v. National Industrial Relations Commission and 4 others (1991 PLC 651)* and also by referring the second proviso to section 62(1) of IRA, 2012. Aggrieved with this order, the petitioner assailed the same through instant writ petition.

3. Learned counsel for the petitioner submitted that the application u/s 62 of IRA, 2012, for determination of CBU is pending before the Commission and it is necessary that the same may be decided before holding referendum for determining CBA for the next term. He submitted that the Corporation is a trans-provincial body having unions at

Islamabad, Lahore and Karachi, therefore, in the larger interest of the workers of the Corporation the determination of collective bargaining unit (*hereinafter referred to as CBU*) is mandatory. He in support of his arguments referred section 2(x),(xiii) & (xxxii) of the IRA, 2012, whereby, the terms “establishment”, “group of establishment” and “trans-provincial” have been defined and submitted that Respondent No. 1 without considering that the case for determination of CBU is pending decision before the Commission dismissed the application for stay of referendum as the determination of CBA for the next term would prejudice their case for determination of CBU pending decision before the Commission which may become infructuous in case the referendum for CBA is held. Learned counsel contented that the impugned order dated 11.02.2020, passed by Respondent No. 1, is thus illegal, unlawful, unjust, arbitrary, whimsical and based on *malafide* intention and liable to be set-aside. Learned counsel relied on the judgment of *Sui Southern Gas Company Ltd. v. Registrar of Trade Unions, etc (NLR 2010 Labour 16)*.

4. Conversely, learned counsel for the respondent vehemently contested the petition and submitted that the impugned order dated 11.02.2020, is in accordance with law and the Commission has no jurisdiction to stay, stop or prohibit the proceedings for determination of CBA/referendum unless the Federal

Government filed a reference in terms of second proviso of section 62(1) of the IRA, 2012. He prayed for dismissal of the present petition on this ground.

5. Arguments heard. Record perused.

6. The petitioner has filed an application u/s 62(1) of the IRA, 2012, for determination of CBU in view of the fact that the Corporation is a trans-provincial establishment within the meaning of section 2(xxxii) of IRA, 2012, and it has branches in more than one province.

7. Perusal of the provision of section 62 (1) of IRA, 2012 read with its second proviso, shows that the commission on an application for determination of CBU made by a trade union **or** a federation of such trade unions **or** on a reference made by federal government, may determine the collective bargaining unit in the interest of workmen after holding such inquiry as it deems fit. The plain reading of second proviso to section 62(1) of IRA, 2012, shows that the proceedings for determining the collective bargaining agents can only be stopped or prohibited on the reference of Federal Government. To the extent of interpretation of second proviso to section 62(1) of IRA, 2012, it has been rightly held by Respondent No. 1, in the impugned order that the Commission has no jurisdiction to stay the referendum proceedings but only on the reference filed by Federal Government.

8. However, It has been observed that the application of the petitioner for determination of CBU under section 62(1) of IRA, 2012, is pending since, December 2019, and therefore, in the interest of justice and fair play, I am of the opinion that the said application be decided in accordance with law within a period of 30 days from the receipt of this order, positively and till such time it is directed that the proceedings for determination of CBA may not be commenced. The petitioner is directed to appear before the commission for decision of the pending application without seeking any adjournment.

8. Instant petition, along with all listed applications, is disposed of in the above terms.

(LUBNA SALEEM PERVEZ)
JUDGE

M. Junaid Usman.