

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4478 of 2019

Pakistan Sports Goods Manufacturers and Exporters Association and
another

Versus

Directorate General of Trade Organizations and others

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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26.12.2019

Malik Ghulam Sabir, Advocate for the petitioners, Mr. Saif Ullah Gondal, learned Assistant Attorney-General, Ms. Asma Khattak, Deputy Director, D.G.T.O.

Through the instant writ petition, the petitioners impugn (i) letter dated 08.11.2019 issued by the office of the Regulator of Trade Organizations (respondent No.2), whereby petitioner No.1 was held not to be entitled to participate in the Federation of Pakistan Chambers of Commerce and Industry ("F.P.C.C.I.") (respondent No.4) election-2020 for not holding the annual elections as required by Rule 13 of the Trade Organizations Rules, 2013 ("the 2013 Rules") and (ii) letter dated 19.12.2019 issued by respondent No.2, whereby respondent No.4 was directed to remove petitioner No.1's nominee, i.e. petitioner No.2 from the final voters list for the F.P.C.C.I. election-2020.

2. Learned counsel for the petitioners submitted that petitioner No.1 could not have been prevented from nominating petitioner No.2 to vote in the F.P.C.C.I. election-2020; that the Executive Committee of petitioner No.1, in its meeting dated 05.07.2019, had appointed an Election Commission and approved the election schedule for the elections for the year 2019-20; that 31.08.2019 was fixed for the election of the Members of the Executive Committee of petitioner No.1; that the last date for the submission of the

nomination papers was 04.08.2019 and for the scrutiny of the nomination papers 06.08.2019 was fixed; that a dispute between the Members of the Election Commission occurred when one of the Members conducted the scrutiny in the absence of the other two Members; that since the number of candidates were less than the vacant seats, the candidates were declared elected unopposed vide notification dated 06.08.2019; and that one Member of the Election Commission issued a separate notification dated 07.08.2019 declaring nine candidates as elected unopposed to the Executive Committee of petitioner No.1.

3. Learned counsel further submitted that one Member of the Election Commission filed a complaint on 30.08.2019 before respondent No.2; that the proceedings culminated in the order dated 17.09.2019, whereby the complainant Member as well as the other two Members of the Election Commission were barred from becoming Members of the Election Commission in the future; that it was also held that all three Members of the Election Commission were required to work together in the conduct of the election under Rule 16 of the 2013 Rules; that subsequently, the Ex-Secretary General of petitioner No.1 unauthorizedly sent a nomination to the F.P.C.C.I. for participation in the election; that the Executive Committee of petitioner No.1, in its meeting held on 17.10.2019, terminated the Secretary General and appointed an Acting/Officiating Chairman of petitioner No.1; that on 22.10.2019, the F.P.C.C.I. issued a provisional voters list which did not mention the name of petitioner No.1's nominee; that the representation for the inclusion of petitioner No.1's nominee in the voters list was turned down by the F.P.C.C.I. vide order dated

30.10.2019; that the appeal against the said order was dismissed on 08.11.2019; that on 13.12.2019, respondent No.2 issued an order holding that under petitioner No.1's Memorandum and Articles of Association, the Executive Committee could only run the day-to-day affairs of the Association; that thereafter the Executive Committee of petitioner No.1 requested respondent No.4 for the inclusion of its nominee in the voters list; that on 19.12.2019, respondent No.2 directed the removal of petitioner No.1's nominee from the final voters list; that the direction to disenfranchise the petitioners from participation in the elections is unlawful and unconstitutional; that since it had been ordered on 13.12.2019 that the Executive Committee could only manage the day-to-day affairs, it could therefore not conduct an election; and that since the non-holding of elections was beyond the control of the petitioners, they could not be debarred from participation in the elections. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

4. On the other hand, the learned Assistant Attorney-General accompanied by the Deputy Director, D.G.T.O. submitted that the impugned letters dated 08.11.2019 and 19.12.2019 do not suffer from any legal infirmity; that petitioner No.1 had violated Rule 13 of the 2013 Rules by not holding annual election for the year 2019-20; that the nomination for participation in the F.P.C.C.I. elections could only be sent by the duly elected Executive Committee; that the petitioners cannot be given an exemption from fulfilling the requirements of Rule 13 *ibid* due to a dispute between the Members of its Election Commission; and that after the order dated 17.09.2019 passed

by respondent No.2, there was no impediment before petitioner No.1 from holding an election. It was prayed that the writ petition be dismissed.

5. I have heard the contentions of the learned counsel for the petitioners as well as the learned Assistant Attorney-General and have perused the record with their able assistance.

6. The vital question that needs to be answered is whether the petitioners can be debarred from participating in the F.P.C.C.I. election-2020 for not having fulfilled the requirements of Rule 13 of the 2013 Rules. The said rule provides *inter alia* that the elections of the Trade Organizations shall be held on annual basis during the period of July to September of the year. In the case at hand, it is admitted position that elections were not held by petitioner No.1 between the period stipulated in Rule 13 of the 2013 Rules.

7. The excuse put forth by the petitioners for not completing the process of the election was that a dispute had occurred between the Members of the Election Commission. One Member (namely Atif Sony) had conducted the process of the scrutiny of the nomination papers in the absence of the other two Members of the Election Commission. The other two Members conducted the scrutiny of the nomination papers on 06.08.2019 and notified the list of the successful and rejected candidates on the same day. The complaint of one Member (Atif Sony) was dealt with by respondent No.2, vide order dated 17.09.2019, whereby all the three Members were barred from becoming Members of the Election Commission in the future. The said order was assailed by one Member (Atif Sony) in a writ petition before this Court. Be that as it may, after

the said order dated 17.09.2019, there was no impediment before petitioner No.1 from conducting an election in accordance with Rule 13 of the 2013 Rules. Furthermore, in the said order dated 17.09.2019, it is clearly mentioned that Rule 16 of the 2013 Rules provides that the Election Commission shall comprise of three Members and all the three Members are to work together in the conduct of the election. Since the names of the elected candidates had not been notified by all the three Members of the Election Commission, it could not be held that the election process was conducted by all the three Members.

8. In view of the above, I do not find any merit in this petition which is accordingly dismissed with no order as to costs. These are the detailed reasons of short order dated 26.12.2019.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan