

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.S-549 of 2015

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Petitioner No.1 : M/s. A.R Khan & Sons (Pvt.) Limited,
Petitioner No.2 : M/s. Alhaushabi Stevedores (Pvt.) Limited,
Petitioner No.3 : M/s. Badaruddin Stevedores (Pvt.) Limited,
Petitioner No.4 : M/s. Nazir Ahmed & Sons (Pvt.) Limited,
Petitioner No.5 : M/s. Ocean Maritime (Pvt.) Limited,
Petitioner No.6 : M/s. Premier Mercantile Services (Pvt.) Ltd.,
Petitioner No.7 : M/s. Sea Board Services,
Petitioner No.8 : M/s. Friends Corp. Stevedores (Pvt.) Ltd.,
Petitioner No.9 : M/s. Bolan Enterprises (Pvt.) Limited,
Petitioner No.10 : M/s. Waqar Stevedores, Cargo Handling Co.
& Terminal Operator,
Petitioner No.11 : Interocean Cargo Services (Pvt.) Limited,
Petitioner No.12 : M/s. Pakistan Stevedores Conference (G) Ltd
M/s Muhammad Humayoon and
Ghulam Murtaza Saryo, Advocates.

Versus

Respondent No.1 : The Registrar of Trade Unions Sindh. (Nemo)
Respondent No.2 : Karachi Port All Stevedores Dock Helper
Workers Union, through
M/s Shahenshah Hussain and Syed Arshad
Ali, Advocates.

Date of hearing : **27.11.2018**

Date of Decision : **18.01.2019**

JUDGEMENT

NAZAR AKBAR, J. The petitioners through this constitution petition has challenged the CBA Certificate dated **20.10.2014** issued by Respondent No.1, whereby Respondent No.2 was certified as Collective Bargaining Agent for the workers in the Petitioners' establishment/ group of establishment under **Sub-section (16)** of **Section 24** of the Sindh Industrial Relations Act, 2013 (**SIRA, 2013**).

2. Briefly stated the facts of the Petitioners' case are that, according to them, they are independent, different and separate entities as Stevedores Companies/ proprietorships/ establishments engaged in the business of stevedoring/ cargo handling, loading/ unloading duly licensed to operate their business in the Karachi Port Trust area having their own workmen employed by them independently. The nature of business of the Petitioners in the Port area is peculiar in the sense that on arrival of ships berthed at the specified Karachi Port Trust premises and on availability of work, persons are being engaged for a limited duration and there is no permanency/ continuity of work, therefore, the Petitioners engage the persons from outside the Port area as and when required on daily wages basis and there is no relationship of employer and employee between the said persons/workers and the Petitioners establishments. Respondent No.2 (Union) was registered under the repealed Industrial Relations Ordinance, 1969 (IRO, 1969) as a general Trade Union consisting / comprising of persons engaged by different stevedores/ private firms from outside the Karachi Port Trust area, therefore, they are neither workmen of the stevedoring firm nor they are on the role of Karachi Dock Labour Board in respect of 22 Stevedoring Companies/ establishments vide certificate of Registration dated **23.1.1989** by Respondent No.2. Originally Respondent No.2 was registered under the provisions of IRO, 1969, whereas consequent upon incorporation of 18th Amendment in the Constitution of Pakistan, 1973 stood devolved to the Provincial Legislature, resultantly in the Province of Sindh, SIRA, 2013 was enacted and in forced, whereby the existence/concept of General Trade Union registered under the repealed IRO, 1969 ceased to exist. The provisions of SIRA, 2013 refer to only those persons/workmen

employed in any establishment or industry as defined in Section 2(ix), (xvi) of SIRA, 2013 and also in respect of group of establishment as defined in Section 2(xii) of the SIRA, 2013. Similarly in terms of **Section 24** of the SIRA, 2013 CBA Certificate is to be issued only to the trade union of the workmen of the same establishment and for group of establishments belonging to same employers and industry, hence, general trade union can neither be registered or remain in existence. Therefore, registration of Respondent No.2 union as well as certificate of CBA issued by Respondent No.1 is patently illegal and its registration is in contravention of the provisions of the SIRA, 2013. The Petitioners individually requested to Respondent No.1 through their letters dated **09.2.2015** and **17.2.2015** that the registration of Respondent No.2 union and CBA Certificate may be cancelled in terms of **Section 12** of the SIRA, 2013 by lodging the complaint before the Labour Court. Despite requests made by the Petitioners individually to Respondent No.1, he has failed to proceed against Respondent No.2 union, therefore, the Petitioners filed instant petition with the following prayer:-

- a) *Declare and hold that the registration of the Respondent No.2 union and CBA certificate dated 20.10.2014 issued by the Registrar of Trade Unions, Sindh is without lawful authority and void;*
- b) *Direct the Respondent No.1 to initiate proceedings under Section 12 of the Sindh Industrial Relations Act, 2013 for cancellation of Respondent No.2 union;*
- c) *Any other relief(s) which this Hon'ble Court may be pleased being fit and proper in the circumstances of the case.*

3. Respondent No.1 filed counter affidavit in which the maintainability of the petition has been challenged. Respondent No.1 has also raised question of resjudicata since the identical question raised through this petition by the same establishment / petitioners

against the same Respondent No.2 has been decided up to the level of Hon'ble Supreme Court against the Petitioner.

4. Respondent No.2 also filed counter affidavit to this Petition wherein he denied the allegations of Petitioners and contended that the Petitioners earlier filed C.P No.S-98/1990 before this Court challenging the registration of Respondent No.2 was dismissed by order dated **08.1.1998** wherein it was held that the persons who formed said union are their workers and the union was lawfully registered. The Petitioners had challenged said order before Hon'ble Supreme Court in Civil Appeal No.1301/1998 which was also dismissed on **21.5.2004**. Therefore, the members of the Respondent No.2 union are the workers of the Petitioners as this issue has already been decided in favour of the Respondent union.

5. I have heard learned counsel for the parties and gone through the record.

6. Learned counsel for the Petitioner has contended that none of the member of Respondent No.2, the so-called Collective Bargaining Agent as declared by Respondent No.1 through the impugned certificate dated **20.10.2014** are employees/workmen engaged by the Petitioners at any point of time. He further contended that even otherwise each one of the Petitioners is a separate entity and have their own independent business, therefore, there is not supposed to be only one Collective Bargaining Agent for many employers. The other contention of the learned counsel is that after 18th Constitutional Amendment, there does not exist any general trade union in the establishments of the Petitioners and the registration issued in 1989 ceased to exist.

7. In rebuttal, the main emphasize of the Respondents is on the questions of Resjudicata since the same issue had been raised earlier by the Petitioners/ establishments against one and the same Respondent in **1998** and it has been decided by this Court. In **1998**, too, the petitioners have claimed to be independent entities and therefore, should not be one and the same CBA for all of them. This Court in C.P No.98/1990 has declined to accept such frivolous claim of the Petitioners and order of this Court was upheld by Hon'ble Supreme Court of Pakistan. It is also contended by the learned counsel for the Respondents that in fact with the promulgation of SIRA 2013, the establishments which were registered unions earlier under Industrial Relations Ordinance, 1969 were saved and continued to be registered trade unions under the Provincial Act of 2013 after the 18th Constitutional Amendment.

8. The contention of Respondents that the present Petition is hit by the law of Resjudicata is neither denied nor disputed. The Petitioners have not filed any affidavit in rejoinder to the counter affidavit filed by both the Respondents and in their counter affidavits they have categorically stated that the Petitioners have suppressed/ concealed the fact of having raised the same issues before this Court in earlier constitution petition. The Respondents have also filed copies of the judgments of High Court and Hon'ble Supreme Court. It has been categorically contended in para-3 and 5 of the counter affidavit filed by Respondent No.2 that para-1 to 10 of memo of petition are reiteration of the same points which were raised in the previous petition. The Hon'ble Supreme Court while upholding the dismissal of earlier petition on the same point has reproduced para-19 to 24 from the impugned judgment in its judgment and for the

sake of brevity, I reproduce only para-21 and 22 from the judgment of this Court in C.P No.98/1990 as follows:-

21. *This brings me to the provision of Section 3(a) quoted supra. The key words employed by the legislature are “workers without distinction”. Word distinction clearly refers to the concept of being separate; being distinct; actually divided or apart from other things. By using the word “without distinction” the legislature meant that any person employed either permanently or any other capacity has the right to form a union. Such is the legislative intent and could not be defeated by the courts while interpreting laws. In view of this legal position and the fact that petitioners engaged the workers to do a particular job for wages, I would hold that the persons who formed the union were indeed workers and no illegality has crept in the registration of such union and the respondent No.1 lawfully registered such union. This has been so held as in rejoinder to the counter affidavit of Respondent No.1, the petitioners did not contest such statement regarding payment of wages but took the shelter behind the case of Vera quoted in para 18.*
22. *This brings me to the second contention urged by the learned counsel appearing for the petitioners whereby he attacked the registration of respondent No.2 union on the ground that the petitioners are independent establishments and not group of establishments, therefore, Registrar was not competent to register one union for 22 petitioners. However, it is not disputed that all the petitioners are an industry in terms of Section 2(xiv) of the Industrial Relations Ordinance. Perusal of Section 2(ix) which defines establishment as premises in which the workmen are employed for the purpose of carrying any industry. Owner of establishment indeed are employers and such employer can have more than one establishments as has been held by this Court in the case of Muhammad Aqil v. Chairman Labour Appellate Tribunal and other (1947 PLC P.194). Similarly premises can be owned by different employers but if they are carrying on an industry of same nature they could be termed as having harmonious combination. Since the word group of establishments has not been defined in Industrial Relations Ordinance, word “group” has been defined in Chambers 20th Century Dictionary (New Edition) at page 554 and inter alia means as follows:*

*“group: a number of persons -----
a number of individual things related*

*in some definite way differentiating
 them from others: a clique -----

 a combination of figures forming a
 harmonious whole -----
 an identity element for the operation

 to fall into harmonious combination.”*

9. **Section 3(i)** of SIRA, 2013 also contains the term “Workers without distinction” used in **Section 3(a)** of IRO, 1969. Similarly the other provisions of IRO, 1969 are also almost the same in SIRA, 2013. The contention of the learned counsel for the Petitioner that with the earlier certificate of Registration was for the establishment of group of only 22 companies and the fresh registration certificate issued by Respondent No.1 to the same Respondent No.2 covers as many as 32 stevedores companies is unlawful as the earlier certificate was not applicable on such establishment/ stevedore companies which were not even on the ground. This argument is also misconceived. In fact whoever joins respondent No.12 as member admits that he is carrying on an industry of the same nature by doing the same business despite being independent is covered on the same principle discussed in above quoted passage from the earlier judgment. It may be added that out of 11 petitioners 10 petitioners are same who had filed earlier petition.

10. The other contention of the Petitioners that after the 18th Constitutional Amendment, Respondent No.2 does not exist is equally misconceived and contrary to law. **Section 80** of SIRA, 2013 is direct answer to this contention and, therefore, I reproduce the same as follows:-

80. Repeal and savings.– (1) *The provisions of the Industrial Relations Act, 2008 (Act IV of 2008), to the extent of its application to the Province of*

Sindh, hereinafter referred to as the repealed Act, are hereby repealed.

(2) *Notwithstanding the repeal of the provisions of the repealed Act –*

(a) *every trade union registered under the repealed Act shall be deemed to be registered under this Act and any collective bargaining agent status granted under the repealed Act shall be deemed to have been granted under this Act and the Union shall enjoy the status for the period it has been certified as the collective bargaining agent;*

(b) *anything done, rules made, notification or order issued, officer appointed, Court constituted, notice given, proceedings commenced or other action taken under the repealed Act or purportedly under that Act till the coming into force of this Act, shall be deemed to have been done, made, issued, appointed, constituted, given, commenced or taken, under this Act; and*

(c) *every reference to the repealed Act shall be construed as reference to the Act.*

11. In view of the above facts, this constitution petition was dismissed by short order dated **27.11.2018** and above are the reasons for said short order.

JUDGE

Karachi
Dated:18.01.2019

Ayaz Gul/P.A