

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitution Petition No.492 of 2013**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Petitioner : M/S Shabbir Tiles & Ceramics Limited, Unit  
No.II, through  
Mr. Muhammad Latif Sagar, advocate.

**Versus**

Respondent No.1 : Registrar of Trade Unions, Govt. of Sindh

Respondent No.2 : Assistant Director Labour Trade Unions,  
East Division, Karachi, through  
Mr. R.S Sajnani, Law Officer, Labour.

Respondent No.3 : Shabbir Tiles & Ceramics Labour Union,  
Through Mr. Ashraf Hussain Rizvi, advocate.

Date of hearing : **05.12.2018**

Date of Decision : **05.12.2018**

**JUDGMENT**

**NAZAR AKBAR, J.** Through this constitution petition the

Petitioner has prayed for the following prayers:-

- I. *hold and declare that the registration certificate by Respondent No.1 in favour of Respondent No.3 union and any proceeding initiated/carried on in continuation of such registration certificate including CBA if issued and order passed thereon is illegal, uncalled for and without lawful authority hence the same is liable to be cancelled/set aside;*
- II. *declare and hold that the whole proceedings conducted by Respondent Nos.1 & 2 contrary to the enquiry report submitted even by the Respondent No.2 and further to issue the impugned registration certificate dated **03.04.2013** (Annexure P/7) contrary to the mandatory provisions of law in the Petitioner establishment based upon no substance and liable to be cancelled/set aside being not sustainable.*

- III. *direct the Respondent Nos.1 & 2 to initiate cancellation proceedings against Respondent No.3 union as required under the law.*
- IV. *Any other relief in favour of the petitioner against the Respondents which this Honourable Court may deem fit and proper under the circumstances of the case.*

2. The facts of this petition are that the petitioner, a Registered Company under the law, claims that its business of Tiles and Ceramics is spread over more than one province. The petitioner company has two units in Karachi namely Unit No.I at 15<sup>th</sup> Miles Stone National Highway, Landhi, Karachi and Unit No.II at Plot No.16, Chowkandi Bin Qasim Town, Karachi and a common balance sheet being one establishment and one management falling under the definition of trans-province establishment under the Industrial Relations Act, 2012 (**IRA, 2012**). It is further averred that the Petitioner company employed 386 employees/ workers in the establishment as whole wherein the two Registered Trade Unions are also functioning under the name and Style of Shabbir Tiles & Ceramics Workers Welfare Union and Shabbir Tiles & Ceramics Labour Union. Both are duly protected under the provisions of **IRA 2012** and all the employees/ workers are members of these two unions. It is further averred that the Petitioner company has contracted out the whole production work of Unit No.II to an independent contractor namely M/S Al-Hafi & Company which contractor independently employed its own workers for execution of work upon which the Petitioner company have no concern with regard to their appointments and other terms and conditions as the contractor independently engage his own workers as per requirement of the work and execution thereof in terms of agreement executed between the Petitioner and the Contractor. It is further averred that

since Respondent No.3 has applied for its registration and upon coming into the notice to the Petitioner, the position was duly clarified to Respondents No.1 and 2 to the effect that in unit No.II there is not a single worker employed by the Petitioner and the whole unit has been contracted out to an independent contractor and a joint enquiry was ordered by Respondent No.2 and even upon receiving of such letter dated **07.3.2013**, the Petitioner also wrote a letter dated **13.3.2013** to Respondent No.3 and has duly submitted the enquiry report holding that there is not a single worker employed by the Petitioner in unit No.II. It is claimed by the Petitioner that despite clear report submitted by Respondent No.2 in which the legal position has been duly clarified. Respondent No.1 has registered Respondent No.3 union by certificate dated **03.4.2013**. It is also averred that since the Petitioner's legal stand has been confirmed by Respondent No.3 while acting on behalf of Respondent No.1 yet another letter dated **15.4.2013** was addressed to the Petitioner by Respondent No.3 in which the proceedings for determination of CBA process intended to be initiated upon which the Petitioner has submitted a detailed protest/ objection dated **16.4.2013** to Respondents No.1 and 2 with further detailed reply by letter dated **19.4.2013** in which it has been further clarified that Respondent No.3 union has been illegally registered against the requirement of law and question of initiating CBA proceedings does not arise, as there cannot be two CBAs in one establishment under the law as such the whole proceedings have illegally been conducted and are against the mandatory requirement of law.

3. In support of his contentions, learned counsel for the Petitioner has relied upon the following case-laws:-

- i. Essa Cement Industries Workers' Union vs. Registrar of Trade Unions, Hyderabad Region, Hyderabad and 4 others **(1998 SCMR 1964)**;
- ii. Shama Zari Industries (Pvt.) Ltd. vs. Registrar of Trade Unions, Sindh and 3 others **(1992 PLC 733)**;
- iii. United Workers Union Al-Abbas Sugar Mills Ltd. (C.B.A) through General Secretary vs. Registrar of Trade Unions, Government of Sindh and 3 others **(2010 PLC 8)**;
- iv. Apollo Textile Mills Limited through Factory Manager vs. The Presiding Officer, Punjab Labour Court No.9 Multan and 2 others **(2006 PLC 19)**;

4. Respondents No.1 and 2 filed written reply/objections wherein they contended that the Petitioner being employer and any other registered trade union in the establishment has no legal and lawful authority to interfere in the matter of registration application of a trade union of workmen and in this context the Hon'ble superior court has observed that the matter of registration of a trade union is one between the applying trade union for registration and the Registrar of Trade Unions and the employer has no concern in the matter. They further contended that Respondent No.3 is legally and lawfully registered union and the proceedings of CBA on the application of Respondent No.3 union were also legally and lawfully initiated.

5. Respondent No.3 also filed counter affidavit in which maintainability of the petition has also been challenged. He also contended that the registration of a trade union is a matter entirely between the Registrar of Trade Unions and the concerned trade union, therefore, neither the employer/management nor any other third party have any right to challenge, dispute or interfere with the same. He further contended that the factory to which Respondent No.3 union relates is an independent and separate establishment wherein 500 workers have been employed and they are working

under supervision and control of the Petitioner's management. He denied all the allegations leveled against Respondent No.3 in the memo of petition and prayed for dismissal of the instant petition.

6. In support of his contentions, learned counsel for Respondent No.3 has relied upon the following case-laws:-

- i. Essa Cement Industries Worker's Union vs. Registrar of Trade Unions, Hyderabad Region, Hyderabad (**1998 PLC 500**);
- ii. Agriculture Workers' Union, Balochistan vs. The Registrar of Trade Unions, Balochistan, Quetta (**1997 SCMR 66**);
- iii. Dr. S.M Rab vs. National Refinery Ltd. (**PLD 2005 Karachi 478**);
- iv. Messrs TNB Liberty Power Ltd. vs. Director of Labour, Government of Sindh and 3 others (**2014 PLC 382**);
- v. National Foods Limited vs. Registrar of Trade Unions, Government of Sind and another (**2008 PLC 260**);
- vi. Sirajuddin Paracha and 12 others vs. Mehboob Elahi and 3 others (**PLD 1997 Karachi 276**).

7. I have heard learned counsel for the parties and perused the record.

8. The contention of learned counsel for the petitioner that respondent No.3 union is registered by respondent No.1 in contravention of the labour laws since after a proper enquiry, it was established that none of the workers have been employed by the petitioner establishment is misconceived. The employees/ workers of contractor in an establishment are the workers of the said establishment irrespective of the control of contractor or establishment. Such workers are entitled to form a trade union in view of the definition of Establishment given in **Section 2(ix)** of the **IRA, 2013** which reads as follows:-

“(ix) *“establishment” means any office, firm, factory, society, undertaking, company, shop, premises or enterprise in the Province of Sindh, which employs workmen directly or through a contractor for the purpose of carrying on any business or industry and includes all its departments and branches, whether situated in the same place or in different places having a common balance sheet and except in section 25 includes a collective bargaining unit, if any, constituted in any establishment or group of establishments*”.

The petitioner has not placed on record any document showing existence of their trans-provincial establishment. Even registration of other trade unions with any other federal or provincial Registrar of Trade Union has not been filed. The petitioner has failed to show even otherwise any irregularity in the registration of the trade union and the contention that all workers in unit No.2 (where respondent No.3 is registered) are workers of an independent contractor namely Al-Hafi & Company is totally misconceived.

9. Respondent No.3 has also challenged the maintainability of the petition on the ground that the registration of a trade union is an issue between the trade union and the Registrar of trade unions and it has no concern with the employer or any rival trade union in existence of the very establishment. The official respondents have also supported the contentions of respondent No.3. Both have relied on the judgment reported in **1998 SCMR 1964** wherein it has been held that neither the employer nor a trade union already existing in the same establishment can claim *locus-standi* to challenge the decision of the Registrar merely on the ground that no opportunity of hearing was provided to them. The said judgment has been followed by several subsequent judgments and in a recently even in **2014 PLC 382** this Court relying on the same judgment has been pleased to dismiss identical constitution petition filed by Messrs TNB Liberty

Power Limited. In para-14 of the said judgment it was observed as follows:-

14. *In case of Essa Cement Industries Workers' Union v. Registrar of Trade Unions, Hyderabad Region Hyderabad, the Honourable Supreme Court has observed that trade union of Workmen cannot be registered by the Registrar unless he is satisfied that the conditions laid down in section 7(2) of IRO, 1969 (now section 6 of I.R.A.) have been fulfilled by the Union. Satisfaction of Registrar implies proper application of mind and therefore, the Registrar cannot act mechanically but he must first conduct an enquiry to satisfy himself as to the condition laid down in S.7(2) of the I.R.O., 1969. It has **further been held that neither the employer nor trade union already existing in the same establishment can claim locus standi to challenge the decision of the Registrar**, merely on the ground that no opportunity of hearing was provided to it or an objection raised by it before the Registrar was not considered before such decision.*

In the case in hand there is no allegation of violation of conditions laid down for registration of a Trade Union. The objection sent by the petitioner and enquiry is part of Registrar office is sufficient for satisfaction of Registrar of Trade Unions. Merely because a contractor has been hired by the management to carry out its work/business.

10. In view of the above facts and circumstances, this constitution petition was dismissed by short order dated **05.12.2018** and above are the reasons for the same.

JUDGE

Karachi  
Dated:22.02.2019

Ayaz Gul/P.A