

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.1462 of 2014

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

Before: Mr. Justice Nazar Akbar

Petitioner : M/s. Premier Mercantile Services (Pvt) Ltd.
through Mr. Muhammad Humayun advocate

Versus

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

Respondent No.2 : The Joint Director Labour, Govt. of Sindh.
Directorate of Labour West Division, Karachi.

Respondent No.3 : The Joint Director Labour, Govt. of Sindh.
Directorate of Labour South Division Karachi

Respondent No.4 : Premier Mercantile Services Employees
Workers Union. (Nemo for all Respondents).

Date of hearing : **09.05.2019**

Date of Decision : **30.05.2019**

JUDGMENT

NAZAR AKBAR, J. Through this constitution petition the

Petitioner has prayed for the following prayers:-

- i. *call Record & Proceedings from the Respondent No.1 in respect of Certificate of Registration dated 21.10.2014;*
- ii. *hold and declare that IRA, 2012 being applicable to the Petitioner Trans-provincial Establishment, the impugned Certificate of Registration dated 21.10.2014 issued by the Provincial Registrar Trade Unions, Sindh is illegal, unlawful and having no legal effect;*
- iii. *quash Certificate of Registration of Trade Union bearing No.709 dated 21.10.2014;*
- iv. *restrain the Respondents No.1 to 3 not to issue CBA Certificate to the Respondent No.4, till the final decision/ outcome of this Constitution Petition;*

- v. grant such other relief of this Hon'ble Court may deem fit and proper in the circumstances of the case.*

2. Briefly stated the Petitioner claims to be a company registered under the Companies Ordinance, 1984 and is engaged in the business of stevedoring, cargo container handling at Sea Port, Karachi and Dry Port, Lahore having its Head Office situated at 5th Floor, Business Centre, Mumtaz Hassan Road, Karachi Establishment at East Wharf, Karachi Port and Regional office establishment situated at 229, A-3, Gulberg-3, Gurumangant Road, Lahore as such fall within the definition of “Trans-Provincial Establishment” as defined in **Section 2(xxxii)** of the Industrial Relations Act, 2010 (**IRA, 2012**). Therefore, in view of **Section 87** of the IRA, 2012, the Sindh Industrial Relations Act, 2013 (**SIRA 2013**) is not applicable to Trans-Provincial Establishment (Petitioner). Respondent No.1 is appointed by Government of Sindh under **Section 14** of the SIRA, 2013, exercising and performing the powers and functions under SIRA, 2013 whereas Respondents No.2 and 3 are authorized officers to deal with the matters of registration of Trade Unions, determination of Collective Bargaining Agent (CBA) in terms of SIRA, 2013. It is further averred that Respondent No.4 is an illegally and unlawfully registered Trade Union as it has been registered contrary to the provisions of IRA, 2012 by Respondent No.1 with the connivance of Respondent No.2 and so-called office bearers of Respondent No.4 union knowing fully well that the Petitioner Establishment is a Trans-Provincial and only IRA, 2012 is applicable. It is also averred that Respondent No.4 union submitted an application dated 10.09.2014 alongwith relevant documents for registration of union under the name and style of “Premier Mercantile

Services Employees Workers Union” alleging workers employed in “Premier Mercantile Services (Pvt) Ltd. by falsely mentioning Establishment situated at Plot No.B-256 B-273, SITE, Karachi and after registration, Respondent No.4 sent photocopies of registration documents to the Petitioner by post. Even Respondent No.2 addressed a letter dated 30.09.2014 to the Petitioner which was in fact not served upon the Petitioner due to wrong/incorrect address mentioned in the said letter, whereby Respondent No.2 advised the Petitioner to submit complete list of workers employed by Petitioner’s establishment showing names, parentage, department as the office of Respondent No.2 received application dated 10.09.2014 for registration of Respondent No.4 union formed in respect of workers employed in Petitioner establishment.

3. Respondents No.1 to 3 in their reply/comments have contended that the Petitioner company is doing business of stevedores means loading and unloading the cargo from the ships at the seaport. The respondents in the counter affidavits have shown surprise on the contention of the Petitioner that the Petitioner has branch office at Lahore as stevedoring company. In fact there are only two ports functioning in Pakistan, one is in Sindh and other in Baluchistan, therefore, the Petitioner’s claim of having a branch at Lahore and calling themselves to be trans-provincial establishment seems surprising, unreasonable and baseless.

4. Respondent No.4 in separate counter affidavit has contended that Respondent No.4 is lawfully registered trade union in accordance with the provisions of SIRA, 2013 by the name and style of Premier Mercantile Services Employees Workers Union vide registration No.709 dated **21.10.2014**. They further contended that the

organization of the Petitioner is permanently working in the province of Sindh since long period and also having their assets in Karachi and the nature of the work is stevedoring which relates to seaport. It is also the stand of Respondent No.4 that there are only two seaports in Pakistan one is situated in Karachi and the other is in Baluchistan Province, therefore, the formulation of Trade Union is in accordance with law.

5. I have heard learned counsel for the Petitioner and perused the record.

6. Learned counsel for the Petitioner has also filed synopsis of the written arguments. Court orders sheet dated **13.11.2014**, **08.12.2014** and **22.01.2015** reflects that copies of reply statements filed by the respondents were supplied to the Petitioner, but in his written arguments he has claimed that contents of Petitioner have gone unchallenged. Learned counsel for the Petitioner was also confronted with the question that how this constitution petition by the EMPLOYER is maintainable against the registration of a trade union in their establishment. The learned counsel in his written arguments has not stated anything about the maintainability of the petition except on the point that the Petitioner is a trans-provincial establishment. Learned counsel for the Petitioner has relied upon the following case-laws:-

- i. *Pakistan Workers Federation, Balochistan through President Pakistan Workers' Federation, Balochistan and others vs. Government of Pakistan through Federal Secretary, Ministry of Law and Justice, Islamabad and others (2014 PLC 351);*
- ii. *Messrs Sui Southern Gas Company Ltd. and others vs. Federation of Pakistan and others (2018 SCMR 802);*
- iii. *KESC and others vs. N.I.R.C and others (2015 PLC 1);*

- iv. *Unreported judgment passed by the National Industrial Relations Commission, Islamabad in Case No.19(07)/2014 (PARCO Workers Union Pak Arab Refinery Limited vs. M/s Pak Arab Refinery Limited Corporate Head Quarters).*

None of the above case-laws is relevant in the facts of the case in hand. The Petitioner in support of his claim that he is a trans-provincial establishment has not brought anything on record nor he has filed any corporate document to show that the nature of business they are doing at Karachi is one and the same which they are doing outside the province of Sindh. The Respondents have categorically pointed out that the business of stevedores is possible only at the seaport area which is either in Sindh or in Balochistan. The Petitioner in his written synopsis of arguments has not controverted the said contention raised by the Respondents in their reply statement/ objections. In absence of any document showing the existence of the Petitioner as trans-provincial establishment and/or registration of any other trade union with any other federal or provincial trade union, the contention of learned counsel that SIRA, 2013 is not applicable appears to be misconceived. Just a bald statement in the memo of petition is not enough for the High Court to endorse that the Petitioner is trans-provincial establishment. Even otherwise it is question of fact and controverted by the Respondent. This factual claim of Petitioner cannot be examined by this Court in exercise of constitutional jurisdiction. It may be mentioned here that the same Petitioner M/S Premier Mercantile Services (Pvt.) Limited was also one of the Petitioners in **C.P No.S-549/2015** alongwith ten other petitioners who are doing the same business as stevedores at Karachi Port and in that petition also registration of a trade union in the group of establishment (**Section 2(xii)** of SIRA, 2013) was challenged. In the said petition the question of applicability of **SIRA**,

2013 was not disputed by the present Petitioner. The aforesaid petition was dismissed by order dated **18.01.2019**.

7. It is settled law that an employer is not supposed to be aggrieved by the registration of any trade union in his establishment. If any case-law is required on this point one may refer to the case of *Essa Cement Industries Workers' Union vs. Registrar of Trade Unions, Hyderabad Region, Hyderabad and 4 others* (**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. This Court relying on the judgment of Supreme Court in *Essa Cement* case has been pleased to dismiss identical constitution petition filed by Messrs TNB Liberty Power Limited reported as **2014 PLC 382**. In para-14 of the said judgment it was observed by this Court 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.*

The above referred case-law has aptly answered the grievance of the Petitioner that Respondent No.4 has been registered by Respondent No.1 without notice/intimation to the establishment. The Petitioner, as held by Supreme Court in Essa Cement case, had no right to be even intimated by the Registrar and, therefore, Petitioner cannot have any grievance at all.

8. In view of the facts and law discussed above, this constitution petition is dismissed with no order as to cost.

JUDGE

Karachi, Dated: 30.05.2019

Ayaz Gul