

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitution Petition No.S-2302 of 2017**

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

Petitioner : M/s. Captain-PQ Chemical Industries (Pvt) Ltd.,  
through Mr. Muhammad Ali Khan advocate.

**Versus**

Respondent No.1 : Captain-PQ Chemical Industries (Pvt) Ltd.,  
Employees Union.

Respondent No.2 : M. Arshad Abbasi, President.

Respondent No.3 : M. Sajjad, Vice President.

Respondent No.4 : Munir Khan Tinoli, General Secretary.

Respondent No.5 : Akhtar Zaman, Joint Secretary.

Respondent No.6 : Asif Khurram, Finance Secretary.

Respondent No.7 : M. Iqbal, Publicity Secretary.

Respondent No.8 : Captain-PQ Chemical Industries (Pvt) Ltd.,  
Employees Union.

Respondents No.1 to 8 through Mr. Jameel Ahmed Channa, Advocate.

Respondent No.9 : The Registrar Trade Unions, Govt. of  
Pakistan. (Nemo).

Respondent No.10. The Registrar Trade Unions, Govt. of Sindh.  
(Nemo).

Date of hearing : **30.05.2019**

Date of Decision : **30.05.2019**

**JUDGMENT**

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

Petitioner has prayed for the following prayers:-

a. *To declare and cancel the respondent No.1 Union as illegal union as it is registered in violation to Section 8(2)(a) of Industrial Relations Act 2012.*

b. *To declare and cancel the Certificate of Collective Bargaining Agent issued by the Registrar of Trade Unions, National Industrial Relations Commission, (respondent No.9 as illegal.*

- c. *To declare that the Industrial Dispute/Charter of Demands raised by the respondent No.1 Union as illegal, as it is raised by illegal registered Trade Union.*
- d. *Any other relief which this Hon'ble Court deems fit and proper in the interest of justice in favour of the petitioner.*

2. Briefly stated the Petitioner claims to be a Trans-Provincial establishment covered under Section 2(xxxii) of Industrial Relations Act 2012 (IRA, 2012) whereas Respondent No.1 Union is registered by the Registrar of Trade Unions, National Industrial Relations Commission, Government of Pakistan (Respondent No.9) and Respondents No.2 to 7 are its office bearers. Respondent No.8 is the union having the same name but registered at provincial level by Registrar of Trade Union, Government of Sindh (Respondent No.10) which is also being represented by the same office bearers (Respondent No.2 to 7). It is averred that Respondent No.1 union served its industrial dispute/charter of demands dated **20.10.2017** under Section 34 and 35 of the IRA 2012 to the Manager Admin of the Petitioner company signed by Respondents No.2 & 4. It is further averred that Respondent No.1 union is illegally registered, therefore, they are not authorized to raise any industrial dispute/charter of demands. If the industrial dispute/charter of demands to be treated legal, in such a case under Section 35(2) of IRA, 2012, the Petitioner company is bound to settle the dispute within ten days from the receipt of the industrial dispute/charter of demands, whereas the said industrial dispute/charter of demands dated 20.10.2017 was delivered to the Petitioner company on 21.10.2017. It is claim of the Petitioner that under **Section 12** of the **IRA, 2012** the Petitioner company has no right to file appeal before the National Industrial

Relations Commissions (NIRC), except to file petition before this Court.

3. Respondents No.2 to 4 in their Reply/Counter Affidavit have contended that Respondent union is registered as per law under required procedure and formalities, therefore, the same cannot be questioned before this Court though constitutional petition. They further contended that the industrial dispute/charter of demands issued by Respondent union is legal and pertains to genuine problems, issues of workers, therefore, the Petitioner was legally bound to consider the same within stipulated time but the Petitioner failed to consider and entertain the legal demands of Respondent union and the Petitioner has filed the instant petition only to pressurize, harass and threaten the Respondent union.

4. Respondent No.10 in separate written statement has contended that the instant petition is contrary to the Article 17 of the Constitution of Islamic Republic of Pakistan, 1973 which guarantees right of association to the citizens of Pakistan and also against the spirit of Section 3 of IRA, 2012 and Sindh Industrial Relations Act, 2013 (SIRA, 2013) which provides that the workers without distinction whatsoever, shall have the right to establish and subject to the rules of the organization concerned, join trade union and associations of their own choice without previous authorization. Respondent No.10 further contended that it is settled principal 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 and in this regard Respondent No.10 has placed reliance on the case of Essa Cement Workers Union vs. Registrar of Trade

Unions, Hyderabad Region, Hyderabad reported as **1998 SCMR 1964**.

5. I have heard learned counsel for the Petitioner and Respondents No.1 to 8 and perused the record.

6. Learned counsel for the Petitioner on the very first day was directed to satisfy the Court about maintainability of this petition since they have challenged the charter of demand raised by the lawful registered trade union/CBA. The charter of demand was raised on **20.10.2017** and the Petitioner was required to settle the demand within ten days but they preferred to file this constitution petition on **26.10.2017** and without satisfying the maintainability of this petition on **21.11.2017** the Petitioner obtained status-quo orders to be maintained by the parties on the pretext that notice under **Section 35(2)** of the **IRA, 2012** has been served on them. Be that as it may, the Petitioner has failed to make out a case for maintainability of this petition. The sole ground that the trade union of Respondent No.1 is registered both with the Government of Sindh as well with NIRC (Government of Pakistan) and, therefore, the trade union was illegally registered is misconceived. However, even after receiving the comments from the Respondents including the official Respondents when it was clarified that Respondent No.1 is lawfully registered with NIRC, Government of Pakistan on the ground that admittedly the Petitioner is a trans-provincial establishment and that earlier registration of Respondent No.1 with Respondent No.10 ceased to exist and or it stand superseded by subsequent registration with NIRC, the ground of double registration was frivolous. There does not exist two registration certificates since in either case the representatives of workers are one and the same employees to whom

CBA certificate has been issued from NIRC. The other contention of the Petitioner that there was a violation of Section 8(2)(A) of IRA, 2012 has no force since registration granted by the NIRC after satisfying itself about the entitlement of the workers employed in the establishment and the Petitioner/employer cannot challenge the record examined by the Registrar in the constitutional jurisdiction of this Court. In this context it may be clarified that the members of labour union in terms of **Section 8(2)(A)** of IRA, 2012 are supposed to be all those workers/labourers who are registered by the Petitioner/establishment with the Social Security Institution, Old Age Benefit Institution and Workers Welfare Board etc. Therefore, the Petitioner is fully aware of the fact that in case of accepting the demands of Respondent No.1, the benefit would go only to workmen/labourers in his establishment. It is not the case of the Petitioner that none of the Respondents (Respondents No.2 to 7) are workers or labourers in the establishment of the Petitioner. The Respondents have contended that even otherwise the employer is not supposed to challenge the very registration of the union by the NIRC in his establishment in view of the several judgments of the superior Courts that the employer or even any other labour union existing in the establishment has no right to challenge the registration of the trade union. The Petitioner in fact has avoided to fulfill his legal obligation of settling the chartered of demands within ten days or approaching the relevant authorities like Conciliator etc. to settle the lawful demands. The Respondents have relied on judgments reported as *Essa Cement Industries Workers' Union vs. Registrar of Trade Unions, Hyderabad Region, Hyderabad and 4 others* (**1998 SCMR 1964**) and also on the case of *Messrs TNB Liberty Power Limited vs. Director of Labour, Government of Sindh and 3 others* (**2014 PLC**

**382**). The official Respondents have also categorically stated that the registration of Respondent No.1 union is lawful as Respondent No.1 was already registered with the Labour Department, Government of Sindh under SIRA, 2013 prior to the declaration of the status of the Petitioner as trans-provincial. The trans-provincial status of the Petitioner establishment has been admitted by the Petitioner themselves and, therefore, they have no right to challenge the registration of a trade union under IRA, 2012 working in their establishment having branches both in Sindh and Punjab.

7. In view of the above this petition was dismissed by short order dated **30.05.2019** being not maintainable, however, it may be observed that the charter of demands raised by Respondent No.1 union on **20.10.2017** which could not be worked out in view of the status-quo granted by this Court. Therefore, Respondent No.1 may file a fresh charter of demand as soon as possible and the Petitioner should take a decision on the charter of demand strictly in accordance with the IRA, 2012 within the timeframe given in that Act. These are the reasons for short order dated **30.05.2019**.

JUDGE

Karachi, Dated: 20.07.2019

**Ayaz Gul**