# IN THE HIGH COURT OF SINDH, AT KARACHI

**Present:**
Muhammad Ali Mazhar and
Yousuf Ali Sayeed, JJ

**Constitutional Petition No. D-314 of 2020**

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| Petitioner | : | Hanif Gohar, through Khalid Javed, Advocate. |
| Respondents Nos.1 and 2 | : | Federation of Pakistan and the Regulator Trade Organizations, Directorate General of Trade Organizations, through Kafeel Ahmed Abbasi, DAG, along with Shahid Ali, Assistant Director, DGTO. |
| Respondent No.3 | : | Federation of Pakistan Chambers of Commerce & Industry, through Qazi Umair Ali, Advocate. |
| Respondent Nos.4 4(i), 4(ii) and 4(iii) | : | Election Commission - FPCCI, Muhammad Zubair Chhaya, Capt. Abdul Rasheed Abro and Masood Naqvi, through Yasin Azad, Advocate. |
| Respondent No.5 | : | Anjum Nisar, through Abdul Sattar Pirada, Advocate. |
| Respondent No.6 | : | Nemo. |
| Respondent No.7 | : | Engineer Daru Khan, through Yasin Azad, Advocate. |
| Dates of hearing | : | 17.03.20, 12.08.20, 19.08.20, 01.09.20, 09.09.20, 02.11.20, 16.11.20 and 23.11.20 |

**JUDGMENT**

**YOUSUF ALI SAYEED, J -** The Petition relates to the election of the Federation of Pakistan Chambers of Commerce & Industry (the "**FPCCI**"") for the year 2020 (the "**Election**"), as held on 27.12.2019 in terms of the Election Schedule issued in that regard, subject to the relevant provisions of the Trade Organizations Act 2013 (the "**2013 Act**") and Trade Organisations Rules, 2013 (the "**2013 Rules**") made by the Federal Government in exercise of powers conferred under S.31 thereof.

2. Apparently, the Petitioner and Respondent No.6 both contested the Election for the post of Senior Vice President, representing different constituent associations of the FPCCI, the former as a nominee of the Association of Builders and Developers of Pakistan and the latter as the nominee of the Pakistan Ethanol Manufacturing Association, with each of them securing 176 votes from the 352 votes counted as per the result ostensibly announced in the 63rd Annual General Body Meeting of the FPCCI held on 28.12.2019, with 4 further votes being withheld. The relevant excerpt from the aforementioned announcement reads as follows:

> "Mr. Muhammad Hanif Gohar and Mr. Asim Ghani Usman, secured equal votes i.e. 176 each. Four votes of Pakistan Afghan Joint CCI and Travel Agents Association of Pakistan were kept in envelopes on the directives of the Honorable Sindh High Court dated 26th December 2019 (CP D-8424/2019 and the Honorable Islamabad High Court dated 20th December 2019 (WP 4422/2019). The fate of the four concealed votes will be announced on the final outcome of these WP and CP by the Honorable Courts."

3. The grievance espoused by the Petitioner before this Court appears to be predicated on the premise that this deadlock was precipitated by the Respondent No.5 voting in the Election as the nominee of the Pakistan Footwear Manufacturers Association Lahore (the "**PFMA**") as well as the Pakistan Chemical Manufacturers Association (the "**PCMA**"). The Respondent No.5 was the successful candidate for the post of President of the FPCCI, and per the Petitioner, as the election was held on a 'panel basis', with the Petitioner and Respondent No.6 being candidates of the rival "United Business Group" and "Businessmen Panel" respectively, and as the Respondent No.5 also belonged to the same panel as the Respondent No.6, it was contended that he had, as the nominee of both the aforementioned Associations, been able to cast two votes in favour of each of the candidates from that

panel, including the Respondent No.6, it being averred that this was unlawful as his nomination by both Associations was contrary to the Scheme of S.20 of the 2013 Act and as the Respondent No.5 had even otherwise been ineligible to be appointed as a nominee of those Associations; yet those nomination(s) came to pass as such an outcome was facilitated by certain Orders made prior to the elections by the Regulator of Trade Organizations (i.e. the Respondent No.2, hereinafter referred to as the "**Regulator**") on Appeals preferred by the Respondent No.5, being Order-in-Original No. 99/2019 dated 25.11.2019, Order-in-Original No.101/2019 dated 27.11.2019, Orders-in-Original Nos.118/2019 and No.119/2019 both dated 20.12.2019, as well as an Order dated 27.12.2019 made after the Election (collectively, the "**Impugned Orders**"), all of which were bad in law.

4. Vide this Petition under Article 199 of the Constitution, it has accordingly been prayed that

"I). The impugned orders/directions vide order-in-original No.118/2019 and order-in-original No.119/2019 both dated 20-12-2019, order dated 27-12-2019, order-in-original No.101/2019 dated 27-11-2019, order-in-original No 99/2019 dated 25-11-2019 passed by the Respondent No.2 are illegal, without jurisdiction, not sustainable in law, having no legal effect, hence the same may please be set aside; consequently the election process and casting of votes by the voters/members in compliance of impugned orders/directions to such extent may please be set aside;

II). That the Respondent. No.5 was not legally entitled to cast two votes in FPCCI Election 2020 as such all votes casted by Respondent No.5 as a candidate of his Businessman Panel (BMP) and more particularly in favour of Respondent No.6 are liable to be excluded from the votes counted for the purpose of result of said Election;

III). That in the alternate one out of two votes casted by Respondent No.5 in favour of candidates of his Businessmen Panel Group more particularly his one vote casted in favour of Respondent No.6 may be declared illegal and may be ordered to be excluded from the count of valid votes for the purpose of result of FPCCI Election 2020;

IV). That the Petitioner may be declared an elected having been secured 176 votes as against 174 votes secured by Respondent No.6 by excluding two votes casted by one person namely Respondent No.5 and in the alternate only one vote casted by Respondent No.5 in favour of Respondent No.6 may be considered for counting and as such it may be declared that the Respondent No.6 secured 175 votes, hence he lost the Election;

V). Pass orders as an interim measures thereby the Petitioner may be allowed to hold post of Senior Vice President FPCCI for the term 2020;

VI). Cost of the proceedings and any other relief(s) which this Hon'ble Court may deem fit and proper under the circumstances of the case may also be granted."

5. For purpose of reference and due appraisal of the controversy for its determination in its proper perspective, a precis of the proceedings culminating in the Impugned Orders along with a brief as to the decision of the Regulator in each instance is as follows:

(a) In the wake of one Zubair Tufail being included in the provisional voters list of the FPCCI as the nominee of the PCMA instead of the Respondent No.5, the latter had raised an objection against the nomination before the Secretary General of the FPCCI (the "**Secretary General**") and the three member Election Commission of the FPCCI (the "**EC**", i.e. the Respondent No.4), comprised of the Respondents Nos.4(i), (ii) and (iii), which was declined, leading to an Appeal being filed by the Respondent No.5 before the Regulator, which was decided in terms of Order-in-Original No.99/2019 dated 25.11.2019, wherein it was observed that the PCMA had conveyed contradictory nominations, casting doubt on the method/process adopted for nomination, hence the decision of the EC was set-aside and the Secretary General of the PCMA was directed to convene an emergent meeting of its Executive Committee members and nominate the nominee for EC member in a fair and transparent manner and forward the nomination for EC to the FPCCI before 28.11.2019.

(b) The Respondent No.5's nomination on behalf of the PFMA, which had been submitted in his capacity as the proprietor of a concern by the name of 'S.A. Trading Corporation', had been rejected by the Secretary General of the FPCCI on objection raised that said proprietorship concern was not a member of the PFMA, and the Respondent No.5's representation to the Respondent No.3 had also proven unsuccessful. An Appeal to the EC proved fruitless and the Respondent No.5 then filed a further Appeal before the Regulator, which was decided in terms of Order-in-Original No.101/2019 dated 27.11.2019, whereby it was concluded that Rule 15(a) of the 2013 Rules setting out a requirement of two-years valid membership of the trade organization as on the date of announcement of the election schedule by its executive committee in order to be eligible to vote did not apply to nominations for FPCCI elections, which was governed by Rule 20(2)(b), hence the nominee of a trade body for the elections of FPCCI has to merely be a member of a trade body and M/s S.A. Trading Company fulfilled this condition as the relevant membership certificate had been issued by the PFMA on 23.08.2019. As such, the proprietorship concern was held to be a member of the PFMA and to have fulfilled the criteria of nomination for the Elections under Rule 20(2)(b) of 2013 Rules. Accordingly, the Appeal was accepted and the decision of the EC was set-aside, with the Secretary General being directed to include the Respondent No.5's name in the final voters list.

(c) The EC had rejected the nomination paper of the Respondent No.5 for the post of President of the FPCCI as the nominee of the PCMA and excluded his name from the final voters list in that capacity on the basis that his name had already been included in the voters list as the nominee of the PFMA. The Appeal filed by the Respondent No.5 in that regard before the Regulator was decided in terms of Order-in-Original No.118/2019 dated 20.12.2019, where it was concluded that the 2013 Act did not restrict any person to be a member of more than one trade organization, therefore the legitimate rights of a member of the trade body could not be curtailed, hence the Appeal was allowed, with the decision of the EC being set-aside and the Secretary General being directed to include the name of the Respondent No.5 in the final voters list as the nominee of the PCMA and also in the list of candidates for the post of President.

(d) The EC had rejected the nomination paper of the Respondent No.5 for the post of President of the FPCCI as the nominee of the PFMA on the basis of an Order dated 03.12.2019 made by the Islamabad High Court in Writ Petition No. 4172/2019. The Appeal filed by the Respondent No.5 in that regard before the Regulator was decided in terms of Order-in-Original No.119/2019 dated 20.12.2019, whereby it was observed that the Islamabad High Court had clarified vide Order dated 12.12.2019 that the Order of 03.12.2019 was not an injunction against the Respondent No.5's participation in the Election, hence the decision of the EC was set-aside and the Secretary General was directed to include the name of the Respondent No.5 in the list of candidates for the position of President.

(e) On the day of the Election, Objections were raised, including by the Petitioner, as to the casting of two votes by the Respondent No.5 (i.e. as the nominee of the PFMA and the PCMA on the ground that same was against the statutory framework and Article 42 of the Articles of Association of the FPCCI (the "**Articles**") and it was requested that those votes be kept in a sealed envelope in terms of Rule 19(8) of the 2013 Rules. Such request was declined by the EC on the basis of the Order dated 27.12.2019 made by the Regulator.

6. Although the Respondent No.6 appeared in person on one date, he failed to appear thereafter or engage a pleader. The remaining Respondents entered appearance and filed their respective comments/counter affidavits, after which the matter progressed to arguments. As it transpires, the case then came to be heard in two phases, with counsel for the parties firstly being heard at length over the course of several dates and the matter then being reserved for judgment on 09.09.2020, but again being heard thereafter on certain further dates in view of a Statement that came to be filed on behalf of the Petitioner on 26.10.2020, whereby the Judgment made on 19.10.2020 by a learned single Judge of the Islamabad

High Court in Writ Petition Nos. 4172/2019 and 4321/2019 (the "**IHC Decision**") was placed on record, with clarification then being sought in the second phase as to its implications, as will be discussed in due course.

7. Proceeding with his submissions in the first phase, learned counsel for the Petitioner had invited attention to the Impugned Orders and submitted that the Respondent No.5's nomination on behalf of the PFMA, submitted in his capacity as the proprietor of 'S.A. Trading Corporation', had been rightly rejected by the Secretary General of the FPCCI on objection raised that said concern was not a member of the PFMA, and, on appeal, the Regulator had wrongly held the proprietorship to be a member thereof and to have fulfilled the criteria of nomination for the Elections under Rule 20(2)(b) of 2013 Rules. It was submitted that as the membership of the concern had remained suspended due to non-payment of the renewal fee, hence it was not a member of the PFMA as on 31.03.2019, which was a requirement for inclusion in the voters list, and was ineligible as per Rule 15(1) of the 2013 Rules. For purpose of reference, the Rules 15(1) and 20(1), (2)(a) and (b) are reproduced hereunder:

> "**15. Eligibility to vote.** – (1) Subject to provisions of section 10 of the Act, the eligibility of a member of trade organization to vote at the elections of the trade organization shall be subject to following conditions, namely:-
>
> (a) the member has completed two years of valid membership of the trade organization as on the date of announcement of election schedule by the executive committee of the trade organization:
>
> Provided that old members shall be eligible to vote on completion of one year of their enrollment and payment of all dues; and
>
> (b) the member has fulfilled the conditions of membership and renewal thereof of the respective trade organization under Rule 11."

"**20. Organizational structure of the Federation. –** (1) The Federation shall comprise a president, a senior vice president, twelve vice-presidents, an executive committee and a general body.

(2) The general body of the Federation shall comprise the representatives, nominated by each license chamber, association, Association of small traders, women's chamber and chamber of small traders subject to the following:-

(a) Two representatives shall be nominated from each licensed chamber, association, women's chamber and chamber of small traders and association of small traders;

(b) The representatives shall be members of the nominating trade organization;

(c) …"

8. Furthermore, it was contended at that stage that the Regulator had wrongly accepted the nominations of the Respondent No.5 from the PCMA as well as the PFMA, as, per learned counsel, this offended the intent and purpose of Section 20 of the 2013 Act and Article-42 of the Articles, which read as follows:

**20. Restriction on membership.** (1) No person shall be a member of more than such number of trade organisations as the Federal Government may, by notification in the official Gazette, specify in this behalf.

(2) A person convicted for any offence under this Act shall not hold, or be eligible for holding, any office in a registered trade organisation unless a period of five years has elapsed.

**Article-42**

(i) Every representative of the Member Body present, in person, at a meeting of the FPCCI or any of its committees and qualified to vote shall have one vote. The president, in case of quality of votes, shall have one casting vote. [sic]

(ii) No representative shall be entitled to vote at any election meetings of the FPCCI unless all dues, membership subscriptions payable by the Member Body of the FPCCI of which he is nominee have been paid and credited to the accounts of the FPCCI prior to the date and time of nomination(s) to the General Body specified by the Secretary General.

9. It was contended by learned counsel that as the provision pertained to the subject of restriction on membership of trade organisations; the same was to be interpreted as restricting a person's membership to one trade organisation in the absence of a permissive notification issued by the Federal Government. It was submitted that the dual membership of the Respondent No.5 with the PCMA as well as the PFMA and the decision of allowing him to vote as the nominee of both those Associations therefore contravened S.20 of the 2013 Act, as well as Article-42.

10. It was also submitted that on the polling day a further challenge had been raised against the casting of two votes by Respondent No.5's, and it was sought that those challenged votes be kept in a separate sealed envelope, as per Rule 19(8) of the 2013 Rules, however, the Regulator wrongly interpreted and relied upon an Order that had been on 26.12.2019 made by the Baluchistan High Court on Contempt Application No. 77/2019 in C.P. No. 388/2018 to preclude such treatment, and the votes cast by the Respondent No.5 were therefore counted in reckoning the result.

11. It was contended that the Impugned Orders were bad in law and the events transpiring as a consequence had thus had a materially adverse effect on the result Election to the detriment of the Petitioner. On that premise, it was prayed that the Petition be allowed with the Petitioner being declared as having been elected to the post of Senior Vice President FPCCI for the term 2020.

12. Conversely, at that juncture, learned counsel for the Respondent No.5 submitted that the Impugned Orders were passed in accordance with the applicable statutory framework – viz the 2013 Act and 2013 Rules, in as much as there was no provision creating a bar or restriction on the Respondent No.5's nomination as the representative of more than one association. He submitted that the Petitioner had failed to produce any material to show that any objection had been raised by him against the Respondent No.5's nomination as the representative of PCMA and PFMA before or during the electoral process, including on the day of the election, and had also abjectly failed to show that there had been any irregularity during the polls. Furthermore, it was pointed out that the Petitioner had failed to exhaust the remedies provided under the 2013 Act, as the Impugned Orders had not been challenged before the Federal Government, as envisaged under Section 21(2) thereof, and had therefore attained finality. Section 21 of the 2013 Act reads as follows:

> **21. Appeal.** (1) Any person or trade organisation aggrieved by any decision or order of the Administrator may, within fourteen days of communication of such decision or order, prefer appeal to the Regulator.
>
> (2) Any person or trade organisation aggrieved by any decision or order of the Regulator may, within fourteen days of communication of such decision or order, prefer appeal to the Federal Government whose decision, subject to sub-section (4), shall be final.
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> (3) On appeal under sub-section (1) the Regulator or, as the case may be, under sub-section (2) the Federal Government may suspend the operation or execution of the decision or order appealed against until the disposal of such appeal.
>
> (4) Any person aggrieved by the final order or decision of the Federal Government, involving a question of law, may, within thirty days of such order or decision, prefer appeal to the High Court.

13. On the subject of S.21 of the 2013 Act and the maintainability of the Petition, learned counsel placed reliance on the judgments in the cases reported as Messrs. Mumtaz Steel Corporation (Pvt.) Ltd. through Managing Director and 4 others vs. Pakistan Steel Rerolling Mills Association (Karachi Circle) through Secretary and 5 others, Messrs. Recorder Television Network (Pvt.) Ltd. through Chief Executive Officer vs. Federation Of Pakistan through Secretary, Ministry of Information and Broadcasting, Islamabad and another 2013 MLD 99, The Tariq Transport Company, Lahore vs. (1) The Sargodha-Bhera Bus Service, Sargodha, (2) the regional transport Authority, Lahore, and (3) the Provincial Transport Authority, Lahore PLD 1958 Supreme Court (Pak.) 437, Messrs. A.G. Pesticides (Pvt.) Ltd. and another vs. Federation of Pakistan and others PLD 2004 Karachi 620 and Messrs. Union Cosmic Communications (Pvt.), Limited, Karachi through Authorized Director and 5 others vs. Central Board Of Revenue through Member Income Tax, Islamabad and another 2006 PTD 1678.

14. Furthermore, the assertion of voting on a panel basis was dispelled as being bereft of substance and it was also pointed out that Rule 19(6) of the 2013 Rules specifically provide for secrecy of the ballot. With reference to the Counter-Affidavit submitted by the FPCCI through the Acting Secretary General, it was pointed out that the same accordingly reflected that the Respondent No.5 had exercised his right of franchise as a nominee of PCMA and PFMA secretively. It was submitted that the Petition was misconceived and was even otherwise liable to be dismissed as not-maintainable in view of S.21 of the 2013 Act.

15. Learned counsel appearing on behalf of the three-member EC had referred to the Counter-Affidavit filed on their behalf and supported the case of the Petitioner on merit. Furthermore, he opened a new dimension altogether in submitting that the result of the Election had not been formally announced by the EC as required under Rules 17(e) & Rule 18(19) of 2013 Rules in as much as the official announcement was to have been made at the Annual General Meeting of the FPCCI, which, in accordance with the Election Schedule, had been convened on 28.12.2019 at the FPCCI's head office at Karachi, but was adjourned to 04.01.2020 by the Respondent No.7 (i.e. the outgoing President of the FPCCI, presiding over the meeting) as the quorum was not complete. It was alleged that the announcement of the result filed along with the Petition did not bear the signatures of any of the members of the EC and was invalid.

16. Exercising the right of reply, learned counsel for the Petitioner sought to distinguish the judgments cited on behalf of the Respondent No.5 on the point of maintainability by contending that the appellate remedies under the 2013 Act were illusory and inefficacious, with reliance being placed on the judgments in the cases reported as Collector of Customs, Customs House, Lahore vs. Messrs. S. M. Ahmad & Company (Pvt.) Limited Islamabad 1999 SCMR 138, Town Committee, Gakhar Mandi vs. Authority Under The Payment Of Wages Act Gujranwala and 57 others PLD 2002 Supreme Court 452 and Gatron (Industries) Limited vs. Government of Pakistan and Others 1999 SCMR 1072. Furthermore, albeit that the argument of invalidity of the result had not been previously advanced, the submission made in that regard on behalf of the EC was also embraced and adopted. With reference to the pleadings, it

was contended that the Regulator had acted mala fide, in a partial, unjust and oppressive manner, without jurisdiction, hence the Impugned Orders were not sustainable in law, due to which the Petition was maintainable. Additionally, it was contended that as the proper determination of the dispute required an interpretation of S.20 of the 2013 Act, the Constitutional jurisdiction could be invoked on that score without exhausting the remedies provided under the statute.

17. In view of the endeavour of counsel for the EC to reorientate the parameters of the dispute, counsel for the Respondent No.5 had also been extended an opportunity to again address the Court to the extent of the plea raised regarding the announcement of the result, and contended that the members of the EC were biased in as much as the Regulator had set aside certain decisions of theirs vide the Impugned Orders in favour of the Respondent No. 5. Furthermore, he contended that the counting sheets bore the signatures of the EC members and reflected a tally consistent with the announced result.

18. Having heard the arguments advanced at that stage in light of the pleadings and material placed on record, we had reserved the matter for judgment on 09.09.2020, but then relisted the same on further dates for clarification as to the implication of the developments that subsequently came to the fore, as will be discussed herein below.

19. However, as is appropriate, we would firstly address the question of maintainability arising in view of the Impugned Orders being appealable under S. 21 of the 2013 Act, which, suffice it to say, remains unaffected by the intervening circumstances.

20. As can readily be discerned from a plain reading of S.21, in terms of sub-section (2) thereof, any decision or order of the Regulator may be appealed before the Federal Government by any person or trade organisation within the specified timeframe, whereas any final order or decision made at that level, involving a question of law, is in turn subject to an appeal to the High Court under sub-section (4). As such, the grounds raised by the Petitioner in challenging the Impugned Orders with reference to the particular provisions of the 2013 Act and 2013 Rules could well have been taken within that appellate framework, which was not done. Needless to say, it is well settled that the jurisdiction under Article 199 of the Constitution is not to normally be exercised where an alternate remedy is provided in law, unless such remedy is illusory/inefficacious or the case is one where an actor otherwise amenable to issuance of a writ has acted in clear absence of authority/jurisdiction or indulged in an excessive exercise thereof. Indeed, it is precisely these principles that can be distilled from the case law cited on behalf of the Petitioner and Respondent No.5 :-

(a) In the case of Collector of Customs (Supra) it was held by the Honourable Supreme Court that:

> "9. As regards the maintainability of writ petition in the presence of alternate remedy, it is a settled proposition of law that it is no bar if such remedy is only illusory in nature, as observed in Gulistan Textile Mills Ltd. v. Pakistan (1983 CLC 1474). No useful purpose would have been served if the respondent had been required to avail of the remedy of the appeal or revision because the highest body i.e. the C.B.R had already expressed its opinion against the respondent. A reference may be made to Messrs. Usmania Glass Sheet Factory Limited, Chittagong v. Sales Tax Officer, Chittagong (PLD 1971 SC 205) wherein it was observed that where a dispute arises between the parties in respect of fiscal right based on a statutory instrument, it can be determined in writ jurisdiction. After the decision given by the C.B.R. it would have been difficult for the

> Federal Government to take a contrary view about the assessment/ evaluation of the wood imported by the respondent, and in these circumstances no exception could be taken to the respondent's invoking Constitutional jurisdiction of the High Court. Classification of goods is not always a pure question of fact and being a mixed question of fact and law, the High Court is possessed of jurisdiction to adjudicate upon such question in Constitutional jurisdiction in the light of dictum of the Supreme Court in M.Y. Khan v. M.M. Aslam and 2 others (1974 SCMR 196) and Messrs. Delite House Ltd. v. Assistant Collector, Customs (1988 CLC 5)."

(b) In the case of Town Committee, Gakhar Mandi (Supra) the Apex Court held that:

> "21. It is true that as a general rule a person would not be permitted to invoke the extraordinary Constitutional jurisdiction of a High Court under Article 199 of the Constitution if an adequate remedy was available to him to seek redress of his grievance. But then this is also equally true that such was not an inflexible rule of law not subject to any exception. This Court has held, more than once, that a writ of certiorari for instance, could be granted, despite availability of an alternate remedy, where, for example, the impugned order was ex facie without lawful authority or where it was a case of lack or absence of or even excess of jurisdiction, reference may be made to the cases of S.A. Haroon v. The Collector of Customs PLD 1959 SC (Pak.) 177; Pakistan v. Zia-ud-Din PLD 1960 SC 440; Lt.-Col. Nawabzada Muhammad Amir Khan v. The Controller of Estate Duty and others PLD 1961 SC 119; Nagina Silk Mills v. The Income-tax Officer and others PLD 1963 SC 322; Premier Cloth Mills Ltd. v. The Sales Tax Officer 1972 SCMR 257 and Murree Brewery Co. Ltd. v. Pakistan PLD 1972 SC 279. As has been held above, the case in hand was a case of absence of jurisdiction on the part of the respondent-Authority and the High Court was, therefore, not right in rejecting the petition under Article 199 of the Constitution only because a remedy by way of appeal was available to the petitioner before it. The order dated 24-4-1996 of the High Court passed in Writ Petition No. 13342 of 1994 could, therefore, not be said to be an order justifiable in law."

(c) In Gatron's case (Supra), it was observed by the Court as follows:

> "15. Be that as it may, it is well-settled that the rule about invoking the Constitution jurisdiction only after exhausting all other remedies, is a rule of convenience and discretion by which the Court regulates its proceedings and it is not a rule of law affecting the jurisdiction. A Constitution petition is competent if an order is passed by a Court or Authority by exceeding its jurisdiction even if the remedy of appeal/revision against such order is available, depending upon the facts and circumstances of each case. In the instant case, the appellant clearly stated in paragraph 15 of the writ petition the reasons for not exhausting the, departmental remedies."

(d) In the case of Messrs. Mumtaz Steel Corporation (Supra), on the subject of the erstwhile Trade Organization Ordinance, 1961, the law governing the subject of trade organisations prior to promulgation of the 2013 Act whereby that earlier statute was repealed, it was held by a learned Division Bench of this Court that:

> "7. As a result of the above discussion, we are of the view that the Trade Organization Ordinance, 1961, provides inter alia machinery for resolving the grievances relating to election of the Trade Organization including irregularities connected with proxies."

(e) In the case of Messrs. Recorder Television Network (Supra), the Court held that:

> "When special enactment set out mechanism and hierarchy for redressal of grievance, more particularly in cases where the High Court is ultimate repository of justice in its appellate and/or revisionary jurisdiction one may gain fully see Khalid Mehmood v. Collector of Customs, Customs House, Lahore (1999 SCMR 1881), Marhaba Textile Ltd. v. Industrial Development Bank of Pakistan (2003 CLD 1822) and Messrs. Unicom Enterprises v. Banking Court No.5, City Court Building, Karachi (2004 CLD 1452). The apparatus for redressal of grievance in special enactments, has to be exhausted before invoking extraordinary constitutional jurisdiction of this Court. Since the present petition is nothing but to pre-empt the exercise of jurisdiction of the authority, therefore, we would dismiss this petition with cost of Rs.25,000 to be deposited in H.C. Bar Library Fund."

(f) In the case of The Tariq Transport Company (Supra), it was held that:

> "Having given careful consideration to this aspect of the matter, I am of the view that the present case was governed by the general rule that where a statute creates a right and also provides a machinery for the enforcement of that right, the party complaining of a breach of the statute must first avail himself of the remedy provided by the statute for such breach before he applies for a writ or an order in the nature of a writ. Since in the present case the statute under which the respondent had a grievance provides an appeal in which that grievance can be set right, no writ of *certiorari* or *mandamus* or any other discretionary order of that nature should have been issued by the High Court."

(g) In the case of Messrs. A.G. Pesticides (Supra), it was held that:

> "24. Under the provisions of National Tariff Act, 1990, the Petitioner under section 4(a) can approach the Commission to seek protection for the indigenous industries. A complete procedure is provided under the said National Tariff Commission Act, 1990, which entitles a party to seek protection. Once an alternate efficacious remedy available has not been availed by the Petitioner, this Court in exercise of its Constitutional Jurisdiction would not permit the Petitioner to seek such relief through these proceedings. Even on this score alone, this Petition merits dismissal. The cases cited by the learned Counsel for the Petitioner are distinguishable on facts and are of no help to him."

(h) In Messrs. Union Cosmic Communications (Supra), the Court held as follows:

> "15. Thus, in a situation where a complete mechanism is provided under some special statute to redress/decide the grievance of the petitioners, in our view availing of constitutional jurisdiction under Article 199 of the Constitution, without availing of such remedy would make the petitions incompetent and not maintainable in law."

21. Upon proper appraisal of the aforementioned precedents, it is apparent that the principles laid down in the cases cited on behalf of the Petitioner are inapplicable in the matter at hand, as it was clearly within the competence of the Regulator to decide the particular matters giving rise to the Impugned Orders. Reference may be made in that regard to clauses (c) to (f) of S. 14(3) of the 2013 Act, as per which Regulator has the powers and functions to:

> "(c) attend any meeting of the general body or the Executive Committee of such trade organisation or of any committee or other body set up or appointed to transact any business, or to conduct any affair of such trade organisation;
>
> (d) watch and supervise, or cause to be watched and supervised, any election held by or for the purpose of electing persons to the Executive Committee or other body including a region, circle or zone of any such trade organisation;
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> (e) act as a final forum of appeals against the decisions of any person, committee or office-bearers of a trade organisation in matters relating to electoral process before the conduct of election; and
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> (f) annul the results of any election held by any trade organisation if he is satisfied-
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> (i) upon his own knowledge and after such investigation he may think fit to make; or
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> (ii) upon a report made by a person authorised by him to make investigation for the purpose; or
>
> (iii) upon a complaint filed by an aggrieved person in this behalf within thirty days of the announcement of the results of such election, that the irregularities in the conduct of such election justify such annulment and, by order in writing, direct fresh election to be held within such period as may be specified in the order."

22. From a plain reading of S.14(3), it is apparent that the assertion as to the Regulator lacking jurisdiction to make the impugned Orders is misconceived. Moreover, even if it is assumed that any one or more of the Impugned Orders suffer(s) from error, that does not of itself furnish a ground to resort to the writ jurisdiction under Article 199

of the Constitution, bypassing the remedies provided under the statute. The assertion that the appellate remedy was not efficacious in the matter at hand is patently misplaced in view of the statutory mechanism laid down under S.21 of the 2013 Act, which appears even more comprehensive than that provided under the Trade Organization Ordinance, 1961, as the prevailing statute now also provides for a further appeal to the High Court on a point of law. The bare assertion as to the Regulator having acted mala fide, in a partial, unjust and oppressive manner, is also not borne out from the Impugned Orders or any material otherwise placed on record, and such an assertion even otherwise does not dilute the efficacy of the appellate remedies.

23. Whilst we may have normally closed our inquiry on that note without dwelling into the further aspects of the matter, in the second phase of arguments, learned counsel for the Petitioner placed emphasis on the IHC Decision and sought to rely thereon to contend that as Order-in-Original No.101/2019 dated 27.11.2019 had thereby been set aside and concurrent orders of Secretary General of the FPCCI and the EC dated 31.10.2019 and 08.11.2019 respectively had been restored with all legal consequences, the votes cast by the Respondent No.5 in the Election on behalf of the PFMA were rendered invalid. Per learned counsel, as the Respondent No.5 had cast such invalid votes for candidates forming part of his own panel, wrongful benefit had been derived by the Respondent No.6 so as to cause the deadlock with the Petitioner. He prayed that in light of the consequences flowing from the IHC Decision, this Court may be pleased to allow the Petition on that score alone and to declare the Petitioner as having been elected to the post of Senior Vice President.

24. That being so, we have seen fit to delve a little further into the matter, and have discerned that the Impugned Orders essentially turn on the Regulators assessment that (i) as per Rule 20(2)(b), the nominee of a trade body for the elections of FPCCI has to merely be a member of that nominating trade body, which condition was found to have been fulfilled as the relevant membership certificate had been issued by the PFMA to S.A. Corporation on 23.08.2019, while the tenure requirement for voter eligibility as per Rule 15(1)(a) was held to be inapplicable to the FPCCI and its Election, and (ii) it was considered that S.20 of the 2013 Act did not admit to the restrictive interpretation presented by the Petitioner.

25. As is apparent, the IHC Decision relates to the aspect of the Respondent No.5's representation of the PFMA for purpose of the Election and appears to be predicated on a finding as to the applicability of Rule 15(1)(a). Whilst we are of course not sitting in judgment over the IHC Decision, having examined the wording of Rules 15(1)(a) and 20(2)(b), we are constrained to state with utmost respect that we are unable to concur with the conclusion drawn by the learned Single Judge, and do not for our part find any error in the finding of the Regulator, as in our view, for purpose the Election of the FPCCI, the term 'member' employed in Rule 15(1)(a) would connote the nominating Association (i.e. the PFMA), whose eligibility in terms of valid membership over the prescribed tenure had not been impugned. Furthermore, to our minds, the consequences as may flow from the IHC Decision do not constitute a matter for implementation by this Court; instead fall within the domain of the Regulator, who may give effect thereto in the appropriate manner looking to the attendant facts and circumstances of the matter.

26. During the course of hearing on 16.11.2020, learned counsel for the Petitioner sought to introduce yet a further element to the proceedings in the form of another Order-in-Original made by the Regulator, dated 05.11.2020 and bearing No. 82/2020, as well as the Order of the Secretary Commerce dated 06.11.2020 upholding the Regulator's Order on appeal. It was explained that vide such Orders, the Regulator and appellate forum had decided the status of several chambers of commerce whose licenses had been cancelled in the year 2018, but who had approached the Baluchistan High Court and earned a temporary reprieve pending those decisions, under which umbrella they had cast their votes in the interim period. Per learned counsel, those votes were also to be discounted from the tally of the Respondent No.6. Be that as it may, as with the IHC Decision, we are not inclined to give further effect to such Orders vide this Petition, as in our view that exercise falls with the province of the Regulator. Indeed, a functionary of the Regulator, namely Muhammad Asim Nawaz Tiwana, Director, Corporate Investigation, had appeared before us on 23.11.2020 (on which date the second phase of the hearing was concluded and the matter once again reserved for judgment), and on query posed as to the implications of the IHC Decision and Order-in-Original No. 82/2020, as upheld on appeal by the Secretary Commerce, had made an unequivocal statement that the same would be given effect by the Regulator in accordance with law, and all consequences would follow. On that note alone, no further action is warranted on our part. Moreover, other that the Petitioner's assertion that the Election was contested on the basis of a panel and voting took place along those lines, there is no concrete material before us to support the claim that voting ensued accordingly, and at this stage it appears to be mere conjecture on the part of the Petitioner that any other person nominated as the

representative of either the PCMA or PFMA would have cast a vote in his favour rather than in support of the Respondent No.6. Needless to say, this Court cannot base its determination on such assumptions and surmises.

27. As to the divergent points raised on behalf of the EC, it falls to be considered that beyond supporting the Petitioner's stance as to the Regulator allegedly having erred in making the Impugned Orders, the EC has merely questioned the announcement of the Election result at the Annual General Meeting of the FPCCI of 28.12.2019 *sans* its involvement, albeit that the meeting was apparently attended by the Regulator. However, other than the very grounds raised by the Petitioner for impugning the participation of the Respondent No.5, no error or irregularity has otherwise been identified as would vitiate the Election or alter the result. That being so, and as the validity of the overall announcement is not a question that has been raised through the Petition, we would also leave it up to the Regulator to examine this aspect of the matter.

28. Before parting with this judgment, we would however also look to the matter of the interpretation of S.20 of the 2013 Act. In that regard, it merits consideration that Article 4(2)(b) of the Constitution clearly mandates that no person shall be prevented from or be hindered in doing that which is not prohibited by law. Ergo, were it the intention of the legislature to restrict the membership of an individual to a single trade organisation in the absence of general permission to the contrary from the Federal Government, the provision ought to have been specifically worded to unequivocally reflect that intention, which could simply have been done by wording the same to state that "*No person shall be a member of more than*

*one trade organization, unless the Federal Government, by notification in the official Gazette, so allows*". As it stands however, S. 20 does not admit to such a restrictive interpretation. Besides, no violation of Article-42 arises under the circumstances as the same only restricts the representative of each Member Body to one vote, which has been adhered to under the given circumstances, with the factum of the PFMA and PCMA both sharing a common nominee/representative being irrelevant. That being so, in the face of the Regulator's determination in that regard as per Order-in-Original No. 118/2019 holding the field, the refusal to seal the votes cast by the Respondent No.5 appears consistent with the earlier determination and does not have any nexus with the proceedings before the Baluchistan High Court, which apparently did not even relate to the Respondent No.5 or the associations nominating him, but pertained to the other chambers whose status was then under dispute. Nonetheless, we have noted that vide Order-in-Original No. 118/2019 it had been observed by the Regulator that:

> "I. There is a merit in the contention of the counsel for appellant that Trade Organization Act, 2013 and Trade Organizations Rules, 2013 do not restrict any person to be a member of more than one trade organization, therefore the legitimate rights of a member of the trade body cannot be curtailed. However, the apprehensions of FPCCI that if this practice is allowed to continue it may hugely disturb the constitution and functioning of Executive Committee of FPCCI, also merit consideration.
>
> II. While it is not possible at this stage to restrict the right of appellant to be member more than one trade bodies and represent PCMA and PFMA as their nominee for EC/GB for FPCCI for the year 2020, there is also a need to discourage this practice in future. It is high time that office of DGTO, FPCCI and other stakeholders may through consultations develop a frame work and recommend it to the Federal Government for issuing Notification/directions to avoid such situation in the future."
>
> (emphasis supplied)

29. As it thus appears to be the assessment of the Regulator that S.20 of the 2013 Act, in its unbridled form, leaves room for mischief on the electoral front, with it being felt that the contingency could perhaps be suitably addressed by curtailing multiple memberships, we would, in light of that observation, direct the Federal Government to take timely steps in the matter, so as to firstly examine and determine the efficacy of a limit being imposed for purposes of S.20, and if such a step be considered an appropriate measure for addressing the issue, to then devise and implement the requisite change(s) to the regulatory framework to the relevant extent.

30. In view of the foregoing discussion and with the above-mentioned observations, the Petition otherwise stands dismissed, along with all pending Miscellaneous Applications.

**JUDGE**

**JUDGE**

Karachi
Dated _____