

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

C.P No. D-5924 of 2017

M/s. Baluchistan Wheels Limited versus The Registrar of Industry-wise Trade Union, NIRC, Islamabad and 02 others

Date of hearing: 25.09.2019
Date of Order: 25.09.2019

Mr. Ghulam Murtaza Sario, advocate for the petitioner.
Mr. Muhammad Nishat Warsi, DAG.

O R D E R

ADNAN-UL-KARIM MEMON, J:- The Petitioner-establishment being aggrieved by and dissatisfied with the order dated 25.7.2017 passed by the Registrar Trade Union/Respondent No.1 in Case No. 3(31)/2017 has filed the instant Petition on 05.09.2017, whereby he issued Registration Certificate to the “Baluchistan Wheels Workers Union”/Respondent No.2.

2. Mr. Ghulam Murtaza Sario, learned Counsel for the petitioner narrated contention of the Petitioner-establishment and added that the Petitioner is a “trans-provincial” establishment, having its branches in more than one province and is being aggrieved by the order dated 25.7.2017 passed by the Registrar Trade Union, National Industrial Relations Commission Islamabad in Case No.3 (31)/2017, whereby he issued Registration Certificate to the Respondent No.2 Union. Thus, all the proceedings of the Respondent No. 01 relating to registration of the Respondent No.2 Union and issue of Certificate of Registration by it, based on the NIRC (Procedure and Functions) Regulations, 1973, is illegal, ab initio void and of no legal effect and same is liable to be set aside. Learned counsel has conceded that order of the Respondent No. 01 is appealable before the Industrial Relations Commission, however he emphasized that law provides number of workmen in the establishment is the decisive factor, then number of office bearers of the Union could form union, which factor is lacking in the purported registration of the Respondent No.2’s union registration and the decision of the Registrar

of Trade Union is based on surmises, conjuncture and speculative consideration, which is liable to be set aside. Having explained his case, as above, the Counsel for the Petitioner-establishment prays that the instant petition may be allowed.

3. We asked the learned Counsel for the Petitioner as to how the petitioner-establishment is aggrieved to call into the question the registration of the Respondent No.2's Union and whether an appeal against the aforesaid order/decision of Registrar has been preferred before the Commission. He replied that the Respondent No.2's-Union does not fall within the meaning of Section 2(XXXII) of the Industrial Relations Act, 2012, therefore no sanctity can be attached with the order dated 25.4.2017 passed by the Registrar Trade Union in favour of the "Baluchistan Wheels Workers Union"/Respondent No.2. He next argued that the Respondent No.2 was not liable to be registered under the National Industrial Relations Act 2012. Per learned Counsel the Respondent No.3 is a legally and lawfully registered trade union as Industry-wise Trade Union vide Registration Certificate No.09/2017 dated 18.1.2017 with the Registrar of Industry-wise Trade Union in respect of the petitioner's establishment and the said union has also been declared/certified as Collective Bargaining Agent in terms of Section 19(1) of the Industrial Relations Act, 2012 by the Registrar of Industry-wise Trade Unions, Islamabad vide CBA Certificate No.05/2017 dated 12.04.2017 for the workmen employed in the Petitioners establishment; that the Respondent No.2 filed an application for registration of Trade Union before the Registrar of Trade Union by submitting bogus and false documents. Upon filing the said application by the Respondent No.2 Union, the Registrar Industry-wise Trade Union issued Notice dated 19.12.2016 to the Petitioner's establishment whereby the Petitioner was directed to submit the list of total workers employed in the Petitioner's establishment for the purpose of verification claim of the Respondent No.2 union. Per learned Counsel the Respondent No.2 earlier had filed an application for registration before the Respondent No.1 in Case No.3(32)/2016 in the name of Baluchistan Wheels Employees Union with bogus and forged documents vide letter dated

27.7.2016 as such the petitioner had submitted the total list of its employees numbering (159) before the Respondent No.1; that during hearing of an application for registration of Trade Union of Respondent No.2 Union, Mr. Rahatullah, Legal Secretary of the Respondent No.2 Union submitted an application for withdrawal of the earlier application for registration of the union. The Respondent No.1 passed an order dated 27.02.2017 and allowed him to withdraw an application; that on 21.7.2017 the Respondent No.2 union again filed an application for registration of the union under the name and style of Baluchistan Wheels Workers Union, the record clearly shows that the Respondent No.2 union having only (11) members who are working at Industrial Unit Hub, Baluchistan of the Petitioners establishment without participation workman/worker from the Petitioner's establishment. The documents submitted by the Respondent No.2 Union in their second application for registration of trade union whereby the respondent No.1 has issued certificate of registration is in violation of Section 2(xviii) of Industrial Relations Act, 2012 as Respondent No.2 union cannot be declared Industry-wise trade union of Petitioner-establishment.

4. The learned Deputy Attorney General has prayed for remitting the matter to the Registrar of Industry-wise Trade Union for decision afresh after hearing both the parties.

5. We have noticed, since the Respondent No.3's union has been served but they opted not to defend their case, however, we have heard the learned Counsel for the Petitioner-establishment and learned DAG at length on the issue involved in the matter.

6. Foremost questions in the present proceedings is whether Petitioner-establishment can competently approach this Court as an aggrieved party under Article 199 of the Constitution and Whether Respondent No.2's-Union is registered in accordance with Section 7 and 8 of Industrial Relations Act, 2012?

7. First, we would like to examine the issue as to whether the instant Petition is maintainable Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973?

8. To appreciate the aforesaid proposition, reference is made to Article 199(1) of the Constitution of the Islamic Republic of Pakistan, 1973, reproduced as under: -

“A High Court may if it is satisfied that no other adequate remedy is provided by law:- (a) on the application of any aggrieved party make an order—

- (i) Directing.....
- (ii) Declaring.....”

9. The above referred Article lays condition of satisfaction of this Court as to absence of any adequate remedy available under the law to the person/party invoking constitutional jurisdiction of this Court. Therefore, Petitioner-establishment besides being aggrieved should have locus standi to approach this Court under Article 199 of the Constitution. We have noticed that the certificate of registration issued by the Respondent No.1 is still in existence. The objection, which has now been raised by the petitioner-establishment, through the instant writ petition on the aforesaid pleas can hardly been looked into by this Court in presence of remedy provided to the Petitioner-Establishment under section 12 of Industrial Relations Act. Besides that the learned Counsel could not advance any convincing reason to establish that the Petitioner-establishment is an aggrieved party which can impugn registration of the Respondent No.2's-Union by the Respondent No. 01 vide Order dated 25.7.2017 in constitutional jurisdiction of this court. Hence, the instant petition is a futile exercise.

10. In the light of above facts and circumstances, the captioned Petition is incompetent and misconceived, therefore, is accordingly dismissed with all listed application(s), leaving the petitioner to avail an appropriate remedy, if so advised, as provided under the law.

JUDGE

JUDGE

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