

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D- 4674 of 2018

Pakistan Services Limited

Versus

Full Bench of National Industrial Relations Commission and 14 others

Date of hearing : 05.04.2021

M/S S. Naeem Bukhari, Muhammad Afzal Siddiqui, Abdul Qadir Khan, and Syed Noman Zahid Ali, advocates for the petitioner.

Mr. Abdul Hafeez Amjad, advocate for respondent No.8.

Mr. Muhammad Aqil, advocate for respondents 9 to 12.

Mr. Arshad Mehmood, advocate for respondent No.13.

Mr. Junaid M. Siddiqui, advocate for respondent No.14.

Mr. Ghulam Sarwar Chandio, advocate for respondent No.15.

Mr. Muhammad Nishat Warsi, DAG.

JUDGMENT

ADNAN-UL-KARIM MEMON, J. –The petitioner-Pakistan Services Limited (PSL) has impugned the order dated 10.05.2018 passed by the Full Bench of National Industrial Relations Commission (NIRC-FB), Islamabad in Appeal No. 12(03)/2018 filed by the Petitioner-PSL, sustaining the order dated 19.12.2017 passed by the Single Bench of NIRC, Islamabad (NIRC-SB), inter-alia on the ground that Registrar, Trade Union, NIRC is not part of the National Industrial Relations Commission and has no jurisdiction/power under the Industrial Relations Act, 2012 [IRA, 2012], to register an Industry-wise trade union, that petitioner and/or respondent Nos.9 to 13 are not Trans-provincial establishments without the presence of the petitioner-PSL; that respondent Nos. 8 & 15 are not lawfully constituted, nor lawfully registered as Industry-wise Trans-provincial Unions; that the proceedings undertaken by Respondent-registrar, both for registration of Industry-wise Trade Unions and determination of Collective Bargaining Agent [CBA] are without lawful authority and Coram-non-judice.

2. In view of the fact, that a lis on the subject matter between the parties in the instant petition is pending before the Single Bench of NIRC, Islamabad, we asked learned Counsel for the petitioner-PSL to satisfy this

Court about maintainability of this petition under Article 199 of the Constitution.

3. Sayed Naeem Bukhari, learned counsel for the petitioner-PSL briefed us on the factual and legal aspects of the case. He submitted that the petitioner is a public limited company engaged in various trades and businesses for Industrial Relations Act, 2012, [Act, 2012] but, does not have any registered trade Union in Islamabad Capital Territory. He emphasized that the present dispute relates to various hotels in Pakistan, operated by the petitioner-PSL which are independent establishments as defined under the Act, 2012; that where separate trade unions are registered since long and have elected Collective Bargaining Agents (CBAs), separate agreements are entered by the management of the hotel concerned; that none of the hotels are branches of the petitioner-PSL or inter se; that the respondent No.15 swiftly formed a trade union, claiming to have only 23 members in the hotels in Lahore and Karachi and applied for registration as Industry-wise Trade Union under the aforesaid Act, 2012; the said application for registration though not maintainable under the relevant law, was allowed, without notice to the registered trade unions of their respective establishments and without consent of the establishments in the said two Provinces, contrary to the provisions of law, inter alia, of Sections 6,7,& 8 of the Act-2012; petitioner's grievance is that respondent No.15 applied to respondent No.3/Registrar, Trade Union for being declared as Collective Bargaining Agent [CBA] and sought referendum on that basis; the said action was resisted by the petitioner-PSL; and, at present the proceedings are being conducted by a Deputy Registrar, who is not even a statutory officer and to whom no authority could be vested or delegated to act as Registrar; that Registrar can only be assisted by Joint Registrar appointed by the Federal Government; on this basis alone these proceedings are nullity in the eyes of law; that respondent No.8-union which consists of 30 employees as its members has also been registered by the Registrar as Industry-wise Trade Union; and, it filed Case No.19(13) 2017 under section 62 of the Act, 2012 before the learned Single Bench of NIRC Islamabad [NIRC-SB]. He asserted that in the said proceedings, all parties, except respondent No.15 consented to the stay application while presenting their case, which was granted and subsequently recalled vide order dated 19.12.2017, and the same was challenged before Full Bench of NIRC at Karachi, [NIRC-FB]. However, the said Appeal was dismissed vide order dated 10.5.2018. Petitioner-PSL being aggrieved by and dissatisfied with the order dated 10.05.2018 passed by the NIRC-FB, Islamabad in Appeal No. 12(03)/2018 has filed the instant Petition on 20.06.2018. He added that Order dated 10.05.2018 passed by Respondent No.1 and Respondent No.2 is without jurisdiction, without lawful authority, and nullity

in the eyes of law being of no legal effect or consequence. He further argued that Registrar, Trade Union NIRC is not part of the National Industrial Relations Commission and has no jurisdiction or powers under the Act, 2012, to register an Industry-wise trade union. He asserted that Respondents could not continue with the subject proceedings under the law. He lastly submitted that Respondent No.3 has neither been empowered by law to register Trans-provincial Trade Unions nor to determine CBA and could not be entrusted with delegated powers to perform any function under the IRA, 2012. Reliance is placed on the cases of *Messrs. International Textile Limited through Factory Manager v. Registrar of Trade Unions, Government of Sindh, and 3 others* (2010 PLC 125) and an unreported judgment dated 21.01.2020 passed in Writ Petition No.2188/2019 by the Islamabad High Court, Islamabad.

4. At this stage, we put a query to the learned counsel for the petitioner-PSL that the Registrar is not obliged to act mechanically and he must first conduct an inquiry to satisfy himself as to the meeting of various conditions and requirements as laid down in respect of Registration under the Industrial Relations Act. We also pointed out that nothing contained in the Industrial Relations Act prevents the Registrar from seeking assistance either from the employer concerned or the Union/Unions formed by the workmen in the same establishment. Learned counsel replied that the employer has a right to bring any contravention of relevant legal provisions to the notice of the Registrar, with the further assertion that the employer could certainly object as to the legality of the registration of the Union. And, mere registration of Trade Union will not preempt the employer from raising appropriate objection as to its legality or that its members are not workmen. Thus, the employer has locus-standi to challenge the registration of a Trade Union under the law.

5. At this juncture Mr. Muhammad Afzal Siddiqui and Mr. Abdul Qadir Khan, learned counsel have sought permission to assist this Court on the subject issue. Per learned counsels, Section 62 contemplates stoppage or prohibition of determination of CBA only on receipt of a reference made by the Federal Government. The Act-2012 has no application as there is no trans-provincial establishment. That all hotels have their employers and employees for industrial relations laws and have lawfully registered union and/or CBAs. They asserted that the concept of trans-provincial status has already been interpreted in the cases of *HABIB BANK WORKERS' FRONT OF PAKISTAN Versus REGISTRAR OF TRADE UNIONS, DIRECTORATE OF LABOUR, GOVERNMENT OF SINDH and others*, 2014 PLC 229, *KESC and others Versus N.I.R.C. and others*, 2015 PLC 1. They further submitted that the Hon'ble Supreme Court in the case of *PAKISTAN TELECOMMUNICATION COMPANY LTD Versus MEMBER*

NIRC and others, 2014 SCMR 535, has settled the issue about the application of IRA-2012, on the premise that since PTCL is a single establishment having branches throughout Pakistan. They further argued that the NIRC is vested with the jurisdiction to register an entity as an Industry-wise trade union under section 54(b) of IRA-2012 and not the Registrar. To support their contentions, they have placed reliance on the cases of Air League of PIAC Employees v. Member NIRC and others, PLC 2017 115 (Islamabad), Allied Bank of Pakistan Workers Union through General Secretary v. Registrar of Trade Unions, Punjab, 62-D, New Muslim Town and 2 others, PLC 2000 104 Lahore, All Pakistan Seamen's Workers Union through General Secretary v. Pakistan Seamen's Union through Secretary and others, 2007 SCMR 1380. They lastly argued that the matter needs to be remanded to the competent authority/registrar to look into the subject affairs and take the decision under the law within a reasonable time.

6. Mr. Muhammad Aqil, learned counsel for respondents 9 to 12, Mr. Arshad Mehmood, counsel for respondent No.13, Mr. Junaid M. Siddiqui, counsel for respondent No.14, have adopted the arguments of Mr. S. Naeem Bukhari, Mr. Muhammad Afzal Siddiqui, and Mr. Abdul Qadir Khan, learned Counsels for the petitioner-PSL.

7. Mr. Abdul Hafeez Amjad, learned counsel for respondent No.8, has refuted the submissions of learned Counsel for the petitioner-PSL and argued that initially, he filed Grievance Petition under Section 62 of the IRA-2012 before the NIRC-SB, for determination of two Collective Bargaining Units (CBUs) in the petitioner-PSL; that two CBUs ought to have been determined in the said establishment; that earlier there were trade unions in each Pearl Continental Hotel [PCH] which were legally registered but, after enactment of the IRA-2012 there is no such concept of provincially registered trade unions in the trans-provincial establishment. And, in this regard, Pearl Continental Hotel Staff Union [PCH Staff Union] obtained the status of industry-wise trade union along with Pearl Continental Hotel National Labour Union [PCN Labour Union]. Per learned counsel, this was the reason for filing the grievance petition, whereby vide order dated 17.10.2017 status quo was ordered to be maintained. However, subsequently, the status quo was recalled vide order dated 19.12.2017. Thereafter, the petitioner preferred appeal before the learned NIRC-FB, and the order of the learned NIRC-SB was maintained.

8. On merits, learned counsel argued that this petition is not maintainable *inter alia*, on the grounds that the employer has no role whatsoever in the registration of a Trade Union and has no locus-standi to file a petition. He next argued that the matter involves adjudication of factual

controversy which cannot be decided in exercise of Constitutional jurisdiction. That law relating to Trade Unions has to be liberally and beneficially construed. He emphasized that the matter of registration is always between the Union applying for registration and the Registrar and others including pre-existing registered trade unions and employers would have no say in the matter. 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 it or an objection raised by it before the Registrar was not considered before a decision. If a Trade Union is registered there is no immediate or direct injury caused by the order of registration to the employer or other trade union or unions. That neither the employer nor any other union or unions can be, at least, in law considered the aggrieved person to hold them entitled to maintain a grievance petition against the mere act of registration of a trade union. He further argued that an Industrial Dispute under the provisions of the Act can only be raised by Collective Bargaining Agent.

9. Mr. Ghulam Sarwar Chandio, advocate for respondent No.15, has adopted the arguments of Mr. Abdul Hafeez Amjad, advocate for respondent No.8. However, he added that respondent No.15 submitted an application to the Registrar for determination of CBA union in the establishment as provided under section 19(2) of IRA-2012; that notices were issued; meetings were held and attended by petitioner-PSL and respondent No.8; voters list was finalized, symbols were allotted to the unions and date was fixed for polling; that respondent No.8 is pocket union though appeared in the referendum proceedings but in the meanwhile filed a petition under Section 62 of the IRA-2012 before the learned NIRC-SB; that the learned NIRC-SB heard stay application and vide order dated 19.12.2017 dismissed the same and recalled the interim order already granted. However, the main petition which is pending is yet to be decided. That respondent No.8 filed an appeal against the order dated 19.12.2017 of NIRC-SB on an interlocutory application, which was also dismissed by the learned Full Bench NIRC vide order dated 10.05.2018; that this Court vide order dated 21.06.2018 directed the parties to maintain status quo and the same is operating till today, whereby the scheduled referendum could not be held; that the respondent No.8 who was petitioner before the NIRC and appellant before the Full Bench did not challenge the order but the employer malafidely filed this petition against both the orders of NIRC and also challenged the registration of the respondent No.15 instead of pursuing/contesting the petition under section 62 of IRA pending before the learned NIRC-SB; that it is an admitted fact that the establishment of the petitioner is trans-provincial establishment as such there

is no substance in the argument that the respondent No.15 is unlawfully registered by the Registrar, NIRC; that the Registrar after finding that the respondent No.15 has completed all the requirements for the registration as provided in Section 8 of the IRA, 2012 registered the same and issued such certificate hence, committed no illegality; 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 it or an objection raised by it before the Registrar was not considered before such decision; that respondent No.15 was registered on 17.12.2015 but the employer/petitioner has challenged its registration after more than 2½ years without exhausting remedy available to him under the provisions of IRA-2012. He placed reliance on the cases of Essa Cement Industries Workers' Union v. Registrar of Trade Unions, Hyderabad Region, Hyderabad and 04 others, 1998 PLC 500. He concluded that the petitioner-PSL has not approached this Court with clean hands; but, has attempted to deprive the respondent-trade unions of their fundamental right; hence, the petition is liable to be dismissed.

10. Learned Counsel for respondents 9 to 12, 13, and 14 supported the impugned orders passed by the NIRC and prayed for dismissal of instant Petition.

11. In rebuttal, learned counsel for the petitioners in unequivocal terms submitted that the issue involved in this petition is about jurisdictional illegality of registration of two industry-wise trade unions i.e. respondent No.8 and respondent No.15 registered by respondent No.3 who invaded the jurisdiction of NIRC vested under Section 54(b) IRA-2012 to register industry-wise trade union and thereafter by proceeding to determine CBA under Section 54(c) for two Pearl Continental Hotel in Pakistan on the application of respondent No.15 although all hotels have their registered trade unions and CBA, whereas respondent No.8 has applied for determination of CBU before the respondent No.3, as such grave illegality was committed by respondent No.3 by entertaining the applications of respondents 8 & 15, however, learned Benches of NIRC erroneously recalled status-quo order in their respective orders without looking into the factual as well as the legal aspect of the case. Therefore, this petition is competent under the law. The learned Counsel for the Petitioner-PSL have further contended that this Court has to interpret the law, which is more in consonance with the affirmed policy under the statute as is understandable from its preamble-key to understand and interpret the law. They further argued that the legislature has unambiguously intended to treat a “trade union” and “industry-wise trade union” as distinct entities. They have been defined separately and the definition of a “trade union” does

not include “industry-wise trade union”. The power of the Registrar in the context of granting registration to an entity under the Act of 2012 has been explicitly restricted to a “trade union”. The NIRC however has concurrent jurisdiction. The powers of the Registrar described under the Act of 2012, by no stretch of imagination can be extended to the registration of “industry-wise trade union”. The powers to grant registration to the latter category of the union exclusively vests in Commission under clause (b) of Section 54 of IRA-2012. In support of their contentions, they relied upon the cases of Habib Bank Workers Front of Pakistan v. Registrar Trade Union, Directorate of Labour Government of Sindh and others, 2014 PLC 229, KESC and others v. NIRC & others, 2015 PLC CS 1, Pakistan Seamen's Union v. National Industrial Relations Commission and others, 2008 PLC 36, M/S International Textile Limited through Factory Manager v. Registrar of Trade Unions Government of Sindh and 3 others, 2010 PLC 125, All Pakistan Seamen's Workers Union v. Pakistan Seamen's Union and others, 2007 SCMR 1380, Esa Cement Industry Workers Union v. Registrar of Trade Unions, Hyderabad Region and 4 others, 1998 PLC 500, Divisional Superintendent Pakistan Railways v. National Industrial Relations Commission, etc, MLR 1997 Labour 75, Pakistan Telecommunication Loyance Unity v. RITU and others, 2006 TD (Labour) 58, Col. Retd. Syed Mukhtar Hussain v. Chairman Federal Land Commission and others, 2004 CLC 1019, Abdul Qadir v. The Presiding Officer Punjab Labour Court and others, PLD 1975 Lahore 44, Rahim Shah v. the Chief Election Commission of Pakistan and others, PLD 1973 SC 24, Dilawar Jan v. Gul Rahman and others, PLD 2001 SC 149, Mst. Mubeen Fatima v. Muhammad Yameen, PLD 2006 SC 214, Utility Store Corporation of Pakistan Limited v. Punjab Labour Appellate Tribunal and others, PLD 1987 SC 447, Ghee Corporation of Pakistan v. Registrary trade Union and others, 1991 PLC 207, Holyday Inn Workers Union v. Registrar of Trade Union and others, 1992 PLC 23, The United Bank Limited Labour Union v. Registrar of Trade Union Government of Sindh and others, 1992 PLC 78, BP Industries Pvt. Ltd. Employees Union Karachi v. Registrar of Trade Unions Sindh and 3 others, 1992 PLC 662, Quetta Municipal Corporation through Administrator and another v. Regsirrara Trade Unions Balochistan and others, 1995 PLC 151, M/S Forbes Campbell & Co. Pvt. Lt. v. Regisrray of Trade Union and another, 1999 PLC 312, M/S Kohinoor Tea Pvt. Ltd. V. Registrar of Trade Union, Karachi and 2 others, 2000 PLC 1, Habib Sugar Mills Limited v. Registrar of Trade Unions Government of Sindh and others, 2001 PLC 441, SG Fiber Employees Union v. REtistrary Trade Unions Government of Sindh and others, 2003 PLC 58, Karim dad v. Member 3rd Board of Revenue Balochistan and others, PLD 1985 Quetta 252, Muhammad Yousuf Ali v. Muhammad Aslam Zia and others, PLD 1985 SC

(PAK) 104, and Major Syed Wilayat Shah v. Muzafar Khan and others, PLD 1971 SC 1884.

12. Mr. Muhammad Nishat Warsi, learned Deputy Attorney General, supported the contention of learned Counsel for Respondent-Unions and argued that the instant petition is not maintainable on the ground that the petitioner-PSL is a trans-provincial establishment and falls within the ambit of the Act of 2012.

13. We have heard learned counsel for the parties, perused the material available on record and case law cited at the bar.

14. As per pleadings of the parties, respondent No.8 is Pearl Continental Hotel Staff Union Pakistan (PCH Staff Union Pakistan) registered as an Industry-wise trade union, respondents No. 9 to 14 are Pearl Continental Hotels owned and operated by the group of petitioner-PSL, whereas respondent No.15 is Pearl Continental National Labour Union (PCN Labour Union). We have been briefed that the Act of 2012 was notified in the official gazette on 14.3.2012. The main object of enactment of the IRA-2012 has been described in its preamble. Section 2 defines expressions 'establishment' and 'group of establishments' in clauses (x) and (xiii) respectively. An industry-wise trade union has been defined in section 2(xviii) as 'a trade union having its membership in more than one province in a group of establishments owned by one employer'. 'Trade union' has been defined in clause (xxxi) of section 2. 'Trans-provincial' has been defined in clause (xxxii) of section 2 as any establishment, group of establishment, or industry having its branches in more than one province. Section 5 describes the powers and functions of the Registrar of the NIRC. Clause (a) of section 5 explicitly provides that the Registrar is empowered to register a "trade union" and to maintain a register for this purpose. The procedure and requirements for registration of a "trade union" are provided under sections 6, 7, and 8 *ibid*. Section 9 provides that after the conditions described under sections 7 and 8 have been met, the Registrar if satisfied, may issue the registration certificate. Section 10 provides that according to registering a "trade union" under section 9, the Registrar shall issue a certificate of registration. Section 11 provides for the legal framework regarding the cancellation of registration of a "trade union". Section 54 describes the powers and functions of the NIRC. Clause (b) of Section 54 empowers the NIRC to register a "trade union" or an "industry-wise trade union" or "group of establishments" in the Islamabad Capital Territory; and, the power to register an "industry-wise trade union" under the Act of 2012 is expressly vested in the NIRC.

15. The main grievance of the petitioner-PSL is that respondent No.15 formed a trade union and applied for its registration as an industry-wise trade union without notice to the registered trade unions of their respective establishment and consent of the establishments in the two Provinces and contrary to the provisions of Sections 6, 7 and 10 of IRA-2012. Per petitioner, respondent-PCH Staff Union Pakistan filed Case No.19(13)/2017 under Section 62 of IRA-2012 before the NIRC-SB, Islamabad. However, the learned NIRC-SB vide order dated 19.12.2017 dismissed the stay application bearing No .24(296)/2017 and adjourned the matter. The respondent-PCH Staff Union Pakistan and petitioner-PSL being aggrieved by and dissatisfied with the aforesaid decision of learned NIRC-SB preferred statutory appeals No.12(01)/2018 and 12(03)/2018 respectively before the NIRC-FB at Karachi. The matter was contested between the parties, however, learned NIRC-FB vide order dated 10.05.2018 maintained the order dated 19.12.2017 passed by the learned NIRC-SB. The petitioner-PSL being aggrieved by and dissatisfied with the aforesaid decisions of NIRC filed this petition on the grounds as discussed supra.

16. Foremost questions in the present proceedings are as follows:

- (i) *Whether Petitioner-PSL has locus standi to approach this Court as an aggrieved party under Article 199 of the Constitution against the decisions of NIRC?*
- (ii) *Whether petitioner-PSL is a Trans-Provincial Organization and falls within the ambit of National Industrial Relations Act, 2012?*
- (iii) *Whether or not the registration of industry-wise trade unions by the Registrar, Trade Union NIRC, Islamabad is violative of the mandatory requirement of Section 8 of Act, 2012, based on strength of workforce; and, liable to be canceled, in view of mandate of Section 11 of the IRA-2012?*
- (iv) *Whether the registrar of trade unions and/or NIRC is competent to determine the registration of the respondent unions?*

17. Firstly, we take up the issue of maintainability of the captioned Constitutional petition raised by learned counsel for the respondents by referring 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.....”*

18. The above-referred Article lays down the first and foremost condition of absence of adequate remedy available under the law to the aggrieved person/party invoking constitutional jurisdiction of this Court. Therefore, the petitioner-PSL must fulfill both the said conditions to establish locus standi. Besides above, Article 199 of the Constitution, inter alia, provides that the High Court may exercise its powers thereunder only “*if it is satisfied that no other adequate remedy is provided by law*”. It is well-settled that if there is any other adequate remedy available to the aggrieved person, he must avail and exhaust such remedy before invoking the constitutional jurisdiction of the High Court, whether such remedy suits him or not. In our view, the doctrine of exhaustion of the remedy envisaged in Article 199 prevents unnecessary litigation before the High Court.

19. In the present case, we have noticed that when a statutory forum is available, for resolving the industrial dispute, between the parties under IRA-2012, the writ jurisdiction cannot be invoked, ignoring the statutory dispensation, as this Court is not a statutory forum of appeal in Industrial Relations hierarchy. In our humble opinion, one of the reasons for introducing the doctrine of alternate remedy was to avoid and to reduce the number of cases that used to be filed directly before this Court and at the same time to follow the prescribed lower forum to exercise its jurisdiction freely under the law. Moreover, if a person moves this Court without exhausting the remedy available to him under the law at a lower forum, not only would the purpose of establishing that forum be completely defeated, but such person will also lose the remedy and the right of appeal available to him under the law. Under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, for the determination of civil rights and obligations or in any criminal charge against him, every citizen is entitled to a fair trial and due process, therefore, it follows that fair trial and due process are possible only when the Court/forum exercises the jurisdiction strictly in accordance with law. It further follows that this fundamental right of fair trial and due process in cases before this Court is possible when this Court exercises jurisdiction only in cases that are to be heard and decided by this Court and not in such cases where the remedy and jurisdiction to lie before some other forum. If the cases falling under the latter category are allowed to be entertained by this Court, the valuable fundamental right of fair trial and due process of the persons/cases falling under the formal category certainly be jeopardized.

20. Case of petitioner-PSL appears to be wholly misconceived and the instant petition is not maintainable on the grounds that prima facie the

petitioner-PSL has approached this Court for the relief as discussed supra in its writ jurisdiction without first exhausting the remedy provided to them by law, or in the presence of a dispute about the industrial dispute. Needless to say that constitutional jurisdiction of this Court cannot be invoked if any adequate remedy is available and the same is not availed/exhausted by the petitioner-PSL. There is a misconception and trend that in any of the situations discussed above, Article 199 of the Constitution can be invoked without availing and exhausting remedy provided by law on the ground of violation of fundamental rights guaranteed by the Constitution.

21. In the instant case, we have noticed that the petitioner has a remedy available under section 12 of the Industrial Relations Act, 2012 before the learned NIRC Bench, where the *lis* between the parties is pending; and, the same remedy firstly is required to be exhausted. In view of the above, learned counsel for the petitioner-PSL has failed to satisfy that how the instant petition is maintainable.

22. Adverting to the question of the referendum as urged by the learned counsel for the parties, we are of the considered view that under Industrial Relations Act, 2012, the referendum of respondent-Unions for Collective Bargaining Agent in Petitioner-Establishment is required to be conducted under the law, if, the respondent-Unions fulfill the criteria as prescribed for such participation in the referendum as discussed supra. The case-law cited at the bar are of no help to them at this stage.

23. In the light of facts and circumstances mentioned above, we hereby hold that the captioned Petition is premature, because of the pendency of *lis* before the learned NIRC. Therefore, the same is found to be misconceived and not maintainable and is accordingly dismissed along with the pending application(s) with no order as to costs, however, the petitioner-PSL will be at liberty to avail/exhaust their remedy before the learned NIRC-SB where the *lis* is pending before it.

Karachi
Dated: 27.4.2021

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