

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No.D-1829 of 2019

DATE

ORDER WITH SIGNATURE OF JUDGE

Present:-

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Amjad Ali Sahito

Pakistan Ship Breaker's AssociationPetitioner

Versus

Federal Secretary Commerce

& others.....Respondents

27-04-2021

Mr.Zaheer-ul-Hassan, Advocate for the Petitioner.

Mr.Hussain Bohra, Assistant Attorney General.

Muhammad Ali Mazhar, J: The learned counsel for the petitioner argued that the petitioner is trade body of ship breaking industry and it was registered on 19.04.2013 with respondent No.2 (DGTO). As a prime function of the petitioner's association it is responsible to represent the best interest of ship breaking industry throughout Pakistan, which is only trade organization of ship breaking industry with 49 registered members. It is further contended that the petitioner is also registered with respondent No.3 (FPCCI) pursuant to Trade Organizations Act, 2013.

2. Basically by means of this petition, the petitioner has challenged the impugned order dated 17.10.2018 passed by Director General, Trade Organizations (Office of Regulator of

Trade Organizations), Ministry of Commerce, Government of Pakistan. This impugned order was communicated to the Secretary General of Pakistan Ship Breakers Association intimating the cancellation of license with immediate effect on the premise that cut-off date for submission of application for renewal of license was 18.01.2018, but they failed to apply for renewal of license. It was further communicated in the order that a show cause notice was issued to the petitioner, but it was returned unserved as per remarks of courier service. Since other reservations were also made in the order germane to the announcement of election schedule within the time frame as specified in the Trade Organizations Act, 2013, therefore, pursuant to this order, the same Regulator has also issued Notification in exercise of powers conferred by clause (a)(d)(e)(h), subsection (1) of Section 7 of the Trade Organizations Act, 2013 for conveying the cancellation of the license No.167 granted to Pakistan Ship Breakers Association (Petitioner).

3. The petitioner filed an appeal to the Ministry of Commerce, which was also dismissed vide order dated 03.01.2019. Learned counsel for the petitioner argued that the address of the petitioner's association office was changed and the show cause notice was allegedly sent at the previous address, which was unserved, therefore, question of submitting reply did not arise. We have seen the appellate order. In paragraph 4 it has been observed that

the DGTO issued show cause notice on 06.08.2018 under Section 7 of Trade Organizations Act, 2013 as to why the license of the Association may not be cancelled, but the Association failed to respond to the show cause notice. At this juncture, learned counsel for the petitioner also pointed out Section 6 of Trade Organizations Act, 2013, in which the Regulator has ample powers and discretion to extend period for applying renewal of license on sufficient cause. Learned counsel for the petitioner articulated that despite this expressed provision available for extension, the appellate authority failed to consider the cause of delay. The Section 9 is also pertinent in which it is provided that where license of a trade organization is cancelled under section 7, the Federal Government may consider grant of license de novo after a period of one year from the date of cancellation of license. A proviso is also attached which explicates that where the license of a trade organization was cancelled under clause (a) of sub-section (1) of section 7, the Federal Government may consider the grant of license de novo at an earlier date.

4. What we have deciphered from the appellate order is that it is primarily focused on the issuance of show cause notice and non-submission of reply by the petitioner but the prime question was never considered, which was the factum of change of address and non-service of show cause notice. The petitioner's counsel admits that there was some lapses

for applying the renewal of license, but the action of cancellation was taken without providing any opportunity of hearing and due process of law. The impugned order was affirmed by the appellate authority without passing any speaking order with regard to the effect of non-service of show cause notice and circumstances resulted the delay for applying the renewal.

5. As a result of above discussion, the appellate order is set-aside with the directions to the respondents to decide the appeal of the petitioner afresh after providing ample opportunity of hearing to the petitioner's representatives. The appellate authority shall consider all the pleas raised by the petitioner afresh and pass speaking order within one month. The appellate authority shall also consider the niceties of Section 6 of the Trade Organizations Act, 2013. The petition along with pending application is disposed of accordingly.

Office is directed to transmit copy of this order to the Secretary, Ministry of Commerce, Government of Pakistan, Islamabad.

Judge

Judge