

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Zulfiqar Ahmad Khan

C.P. No. D-1894 of 2019

M/s Sui Southern Gas Company Limited
Versus
The Registrar of Trade Unions & others

Date of Hearing: 22.11.2019

Petitioner: Through M/s. Asim Iqbal and Farmanullah Advocates.

Respondent No.4: Through Mr. Masood A. Noorani Advocate.

On Court notice: Mr. Muhammad Nishat Warsi, DAG.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- The facts of the case are that respondent No.4, claiming to be an association representing employees of petitioner, have moved an application before respondent No.1 i.e. Registrar of Trade Union for its registration and inclusion of names of contract employees. The application was contested by petitioner however it was allowed vide order dated 16.08.2017 by respondent No.1. Both the petitioner and respondent No.4 were aggrieved of the order. Respondent No.4 preferred an appeal before respondent No.2 i.e. Member National Industrial Relations Commission Islamabad whereas petitioner filed a Writ Petition No.3074 of 2017 before learned Islamabad High Court. The petition was dismissed vide order dated 07.12.2018, which order claimed to have been merged with the order of Registrar, which allowed the application.

The order, as passed by Islamabad High Court, was then assailed before Hon'ble Supreme Court in CP No.449 of 2019 which is pending adjudication. The matter was also contested by respondent No.4 before

Islamabad High Court in the aforesaid Writ Petition No.3074 of 2017. During proceedings before Islamabad High Court the appeal of the respondent No.4 remained pending and it was not disclosed in the proceedings before Islamabad High Court.

That the respondent No.2, without realizing the fact that the notices were never served upon petitioner, as alleged, passed order dated 07.02.2019 modifying order dated 16.08.2017 passed by respondent No.1, which is impugned in these proceedings, which is claimed to have travelled and transgressed the order of Islamabad High Court in the aforesaid writ petition and thus being aggrieved of it, petitioner has filed this petition.

It is claimed at the very outset that the petitioners were not heard in the proceedings pending before respondent No.2 in the shape of appeal. It is urged that in substance the controversy stood resolved by virtue of order passed by the Bench of Islamabad High Court. In terms of paragraph 26, the Bench of Islamabad High Court decided that the “worker” and “workman” includes a person employed directly or through a contractor and since the workmen whose names were sought to be included in respondent union’s voter list had been working against posts of permanent nature and since the workmen had been working at the petitioner’s premises since last more than a decade and since there was nothing brought on record to show that service provider’s representatives had been supervising the duties performed by such workmen at the petitioner’s premises and since the Court did not find any jurisdictional infirmity in the impugned order dated 16.08.2017 passed by respondent No.1, the writ petition was dismissed.

Counsel for petitioner submitted that there was no reason or occasion for the disposal of appeal filed by respondent No.4 before respondent No.2 by additional comments. The appeal was disposed of on

07.02.2019 thus claimed to have overlapped the proceedings and the observations made therein.

We have heard the learned counsel and perused material available on record.

At the very outset we have asked learned counsel for the petitioner to assist this Court as to which part of the order of the NIRC Islamabad in Appeal No.12B(64)/2017 in his view has overlapped or transgressed the proceedings or observations made by the Islamabad High Court. The counsel was unable to explain and he only confined his arguments to the extent that Member NIRC Islamabad should have abstained itself from disposing off the appeal by some additional comments. He argued that once the matter was disposed of by Islamabad High Court adjudicating the issues of the inclusion of voters, which include direct or indirect employees, the appeal became infructuous.

We have perused the order and have also reconciled the two orders. We do not feel that the order of NIRC has overlapped the order passed by Islamabad High Court in Writ Petition No.3074 of 2017. The concluding para of the impugned order is reproduced as under:-

“Keeping in view the judgment of the Hon’ble High Court supra while accepting this appeal the impugned order dated 16.08.2017 modified to the effect that the authorized officer is directed to include the workers employed directly or through a contractor in the voter list. Appeal is allowed. Nor (No) order to cost. File be consigned to R.R.”

Thus, in all fairness the appellate authority also concluded the case with the same observation as observed by the Bench of Islamabad High Court hence it cannot be said that by the order of NIRC the authority of the Islamabad High Court was undermined. In fact in paragraph 2 of the impugned order NIRC Islamabad disclosed pendency

of writ petition and also reproduced the contents of para 17 of the order.

Mr. Masood A. Noorani during the course of the arguments was asked if he would be satisfied if directions are given to respondent No.1 to proceed with the referendum/election in terms of order of Islamabad High Court, he was reluctant to answer and asked his client to reply to the said query. The representatives of the trade union/respondent No.4 in all fairness conceded that the observations of Islamabad High Court insofar as conducting the referendum or election is concerned, after inclusion of the employees, whether direct or indirect has reached its finality and may be observed as such.

Although we have not seen any overlapping insofar as the order of NIRC Islamabad dated 07.02.2019 and the order passed in Writ Petition No.3074 of 2017 dated 07.12.2018 are concerned, however, since both the orders are not in contradiction, propriety demands that we direct the respondent No.1 to conduct further proceedings insofar as referendum and elections are concerned, in terms of the directions given by Islamabad High Court in Writ Petition No.3074/2017. Hence we disposed of this petition by short order dated 22.11.2019 directing that the election/referendum be conducted in terms of order passed by Islamabad High Court in Writ Petition No.3074 of 2017 dated 07.12.2018. Order accordingly.

Above are reasons of our short order dated 22.11.2019.

Dated:

Judge

Judge