

IN THE HIGH COURT OF SINDH AT KARACHI

CP.No.S-961 of 2013

Petitioner : Sui Southern Gas Company Limited.
through Mr. Fasial Mehmood Ghani, Advocate.

Respondents : Registrar Trade Unions & others,
through Ms. Naushaba Solangi, Asst. A.G. Sindh.

Date of hearing : 23.04.2018.

J U D G M E N T

SALAHUDDIN PANHWAR, J: Through captioned petition,

petitioner (Sui Southern Gas Company Limited) has prayed as under:-

- A. Sui Southern Gas Company limited being a Trans Provincial Establishment is covered under IRA 2012, and as such Unions are only to be registered with NIRC (Respondent No.4 and not by the Provincial RTU.
- B. There cannot possibly be more than one CBA in the Trans Provincial Establishment, one certified and declared by the NIRC and other by the Provincial RTU of Sindh.
- C. Provision of Section 87 of IRA 2012 over-ride any other law for the time being in force and that it was not open for the Provincial RTU to carve out from amongst establishment a union restricting and confining itself only to one city and get it registered with Provincial RTU, thus nullifying the effect of provision of IRA 2012 and the Trans Provincial Establishment status and/or registration of trans-provincial Unions or nullify the effects of CBA certification made by Respondent No. 4.
- D. The registration of Union and its certification of CBA by the said Provincial RTU, have ceased to exist, as such Respondent No. 3 Union's registration be cancelled by RTU Sindh (Respondent Union) under sub-section (3) of section 12 of SIRA 2013.

E. In the alternative RTU should apply to the Labour Court of competent jurisdiction for orders of cancellation of the said Union on the ground that the same stands registered in violation to law.

F. To grant such further and or appropriate relief as the Hon'ble Court may deem fit under the circumstance.”

3. Case of the petitioner is that suit Sui Southern Gas Company Limited (petitioner) is a Public Limited Company, engaged in the transmission and distribution of Gas both to industrial and domestic consumers in the Province of Sindh and Balochistan apart from having Liaison office at Islamabad, hence, petitioner falls within the scope of “**Trans Provincial**” Establishment within the meaning and contemplation of Industrial Relations Act, 2012 “**IRA 2012**”; that on 01.07.1989 the respondent No.1 Registrar of Trade Union (**RTU**) Sindh registered Sui Southern Gas Company Ltd Unit “C” Project Labour Union Karachi (**Respondent No.3**)and registered the same under The Industrial Relations Ordinance 1969 (**IRO 1969**);that respondent No.3 was registered by the Provincial RTU, hence, after IRA 2012 such registration is intra vires; it was also informed to respondent No.1 that “**Peoples Labour Union**”of petitioner is certified by **National Industrial Relations Commissions** (NIRC); respondent No.1 has failed to consider that two units are registered with NIRC at Islamabad on the ground that company is Trans Provincial Establishment; therefore, provincially registration for all institutions and purposes have ceased to exist.

4. At the outset, learned counsel while relying upon the unreported judgment of the apex Court passed in Civil Appeals No.1583 to 1598 of 2017 and other petitions contends that since IRA 2012 is declared as a valid instrument, hence, petition may be allowed in those terms. He also refers case laws reported as

ESSA CEMENT INDUSTRIES WORKERS' UNION v. REGISTRAR OF TRADE UNIONS, HYDERABAD REGION, HYDERABAD and others [1998 SCMR 1964], **SUI SOUTHERN GAS COMPANY LTD v. REGISTRAR OF TRADE UNIONS and others** [2009 PLC 120] and **UNITED BANK LIMITED vs. REGISTRAR OF TRADE UNIONS, REGIONAL DIRECTORATE OF LABOUR and another** [2006 PLC 465].

5. Learned Assistant Advocate General Sindh contends that this petition may be disposed of in terms of unreported judgment of the apex Court; since IRA 2012 was in question before this Court and such petition was disposed of while declaring that same is valid piece of instruments and would not be hit by the 18th Amendment, such judgment was assailed before the apex Court and while dismissing such appeals Hon'ble apex Court has observed in para-23 that:

23. For the foregoing reasons, the appeals as also the petition are dismissed and it is held as under:

(1) the Federal Legislature has extra-territorial authority but no such extra-territorial authority has been conferred to the Provincial Legislature by the Constitution;

(2) the Federal legislature does, but the Provincial Legislature does not, have legislative competence to legislate to regulate the trade unions functioning at trans-provincial level;

(3) the matters relating to trade unions and labour disputes, etc., having been dealt with and protected under the International Conventions, are covered under Entries No.3 and 32 of Part-I of the FLL. Thus, the Federal Legislature has legislative competence to legislate in this regard;

(4) under the command of Entry No.13 in PartII of the FLL, the Federation has competence to enact laws relating to the inter-provincial matters, Entry No.18 thereof further , enlarges the scope of the said Entry; therefore, the Federal Legislature has

legislative competence to legislate in this regard too;

(5) the IRA 2012 neither defeats the object of the Eighteenth Amendment to the Constitution nor does it destroy or usurp the provincial autonomy;

(6) the IRA 2012 has been validly enacted by the Parliament and is intra vires the Constitution;

(7) the workers of the establishments/industries functioning in the Islamabad Capital Territory or carrying on business in more than one provinces **shall be governed by the Federal legislation i.e. IRO 2012;** whereas, the workers of establishments/industries functioning or carrying on business only within the territorial limits of a province shall be governed by the concerned provincial legislations;

(8) as we have held that the IRA 2012 is valid piece of legislation, it is held that the National Industrial Relations Commission (NIRC) formed under Section 35 of the IRA 2012 has jurisdiction to decide the labour disputes, etc., relating to the employees/workers of companies/corporations/institutions/establishments functioning in more than one Province.

(9) the IRA 2012, being a procedural law, would be applicable retrospectively w.e.f. 01.05.2010, when the IRO 2008 ceased to exist; and

(10) M/s. Shaheen Airport Services is not a charitable organization and IRA 2012 is applicable to it as it is operating in more than one Province.”

6 Since, there can be no dispute to the legal position that law, once enunciated by Apex Court, shall be binding upon all *organs*, including this Court. The *reliefs*, sought through instant petition, since already dealt with and decided by Apex Court in referred petition, therefore, same cannot be legally reopened or *examined* even before any other court and *even* constitutional jurisdiction of this Court is of no help for such purpose.

The above legal position leaves nothing for any more discussion but to dispose of the instant petition while *needless* reaffirmation that para-23 *referred* above of judgment of Apex Court shall and must be given its binding effect by all, including the respondent no.1.

JUDGE

Karachi:

Dated: 25.05.2018.

Sajid