

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

CP No.S-1000 of 2021
along with
CP No.S-249 of 2022

Date	Order with signature of the Judge
------	-----------------------------------

CP No.S-1000 of 2021.

Hearing / Priority.

1. For hearing of MA No.1031 of 2022.
2. For hearing of MA No.793 of 2022.
3. For hearing of MA No.6614 of 2021.
4. For hearing of Main Case.

CP No.S-249 of 2022.

1. For hearing of M.A. No.1630 of 2022.
2. For hearing of Main Case.

09.05.2024

M/s. Zaheer-ul-Hassan Minhas and Farhan-ul-Hassan Minhas
Advocates for the Petitioner.

Mr. Ghulam Murtaza Saryo, Advocate for Respondent No.3 along
with Mr. Dilbar Khan, President, CBA Union of Respondent No.3.

Mr. Ziauddin Junejo, AAG.

Learned counsel has filed this Petition challenging the impugned
Order dated 10.12.2021 in which the Official Respondent has called upon
the Petitioner to submit record of Workmen and other ancillary details in
terms of Section 24 (2) of the Sindh Industrial Relation Act (**SIRA**), 2013.

2. The main contention of the Petitioner's Counsel is that now the
Petitioner Establishment is Trans-Provincial in view of various Registration
Certificates, issued by the Government of Khyber Pakhtunkhwa [**KP**] and
Punjab, which are appended with the Petition. He has referred to the latest
Certificate, viz. Factory Registration Certificate dated 30th March 2023,
appended with his second Injunction Application-CMA No.3158 of 2024,
issued by the Chief Inspector of Factories, Islamabad. He has relied upon_

i) **2014 SCMR 535 [Pakistan Telecommunication Company Ltd. vs. Member NIRC and others]**

ii) **2023 PLC 169 [Messrs TNB Liberty Power Ltd vs. Registrar of Trade Unions and others]. Liberty Power Case.**

Contended that the Trade Unions in the Establishment of the Petitioner is to be governed by the Industrial Relation Act, 2012 (**IRA-Federal**).

3. This Petition is vehemently opposed by the learned Counsel representing the Respondent No.3-Shabbir Tiles and Ceramics Labour Union. He has filed his Counter-Affidavit to the main Petition and has argued that the present Petition is not maintainable, *inter alia*, in view of the earlier Judgment of this Court in which the Constitution Petition of the present Petitioner was dismissed [*Copy of the Decision is appended with the Counter Affidavit*]. Argued that the impugned Correspondence is within the four corners of law, as the present Labour Union is a registered one for the past many decades; referred to another Petition No.S-176 of 2023, which was dismissed as withdrawn, mentioning the same Prayer Clause as it is stated in the present *Lis*; disputed the Certificates issued by the Government of Khyber Pakhtunkhwa and Punjab appended with the Petition and states that these Certificates [*of Registration*] are in respect of the other Establishment, but not the Petitioner Company.

To augment his arguments, the learned Counsel for the Respondent No.3 has referred to **2018 SCMR 802** [*Messrs Sui Southern Gas Company Ltd. and others vs. Federation of Pakistan and others*], *inter alia*, on the scope of Trans-Provincial Establishment.

4. Learned AAG has supported the arguments of learned counsel for Respondent No.3 and has stated that the impugned Direction / Correspondence is issued within the parameters of law.

5. Arguments heard and record perused.

6. Following Paragraph is relevant from the reported Judgment of Liberty Power Case (*supra*)_

“18. Similarly, it has been held in the full Bench Judgment handed down in KESC case; Paragraph-29, that the ‘establishments’, which are operating at Provincial level only, to them SIRA will apply. Same is the view of Hon’ble Supreme Court in the aforementioned PTCL case, wherein, the following dictum has been laid down:

“12. After combined reading of the scheme of new labour laws, both Provincial and Federal, it may be concluded without any fear of rebuttal that two parallel forums have been created, one on a provincial basis whereas latter is federal level forum, called NIRC. Both these forums are having jurisdiction to deal with industrial disputes and unfair labour practice and other allied matters either attributable to the employer or the workers/workmen, however, the Federal Law has drawn a clear demarcation line of jurisdiction of these two different forums, i.e. Labour Courts in the Provinces and the other NIRC at the Federal Level. It is not the nature of dispute, particularly, unfair labour practice, which confers jurisdiction on one or the other forum but it is the status of the employer or the group of employers, which would determine the jurisdiction of the Provincial Labour Court and that of the NIRC. To be more clear on the point we have no hesitation to hold that once it is established though any means that the employer or group of employers has an establishment, group of establishments, industry, having its branches in more than one Provinces, then the jurisdiction of the NIRC would be exclusive in nature and overriding and super imposing effects over the Provincial Labour Court for resolving industrial dispute including unfair labour practice, etc. related to the employer, having its establishment or branches or industrial units in more than one Province and re-course has to be made by the aggrieved party to the NIRC and not to the Provincial Labour Court.”

In *Sui Southern Gas Case (ibid)*, the Hon'ble Supreme Court has ruled that the IRA Federal is a valid legislation, *inter alia*, relating to the Trade Unions and Labour dispute, which are protected under Article 17 of the Constitution of Pakistan so also International Convention(s). Sub-Paragraph-7 of Paragraph-23 is quite relevant to the facts of present Case, which is reproduce herein under_

“(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;”

7. The earlier Order of this Court passed in CP No.S-492 of 2013 (*relied upon by the Respondent's Counsel, supra*) has been perused; in which the crucial factor for dismissing the Petition was, that at the relevant time the present Petitioner did not place on record documents showing existence of their Trans-Provincial Establishment, couple with the fact, as observed in the Order that ***“Even registration other trade unions with any other federal or provincial Registrar Trade Union has not been filed.”***; *whereas*, the subsequent Constitution Petition [*ibid*] was dismissed as withdrawn without any adverse finding against the Petitioner.

8. The afore-referred Certificates of the two Provincial Governments and of Federal Government are the Official and Public Documents, hence presumption about their genuineness and competency [*the official acts are performed in a regular manner*] as envisaged under Articles 85, 90 and 129(e) of the Qanoon-e-Shahadat Order, 1984, is attracted, because no adverse documentary evidence is shown in rebuttal. The Judgment cited by

the Respondent's Counsel, is not relevant to the facts of present Case, précis whereof is already discussed in the preceding Paragraph.

9. The main purpose of the above two Federal and Provincial Statutes is to protect and safeguard the interest of workmen, labourers and Labour Union. The Trans Provincial Status of an Establishment does not deprive the Trade Union or its members of their rights and interest, except change of forum.

10. The above official record as well as Registration Certificates issued by different Provincial, and the Federal Authorities conclude that the present Petitioner is now a Trans-Provincial Establishment, and it is to be governed by the IRA Federal.

11. Consequently, the Impugned Order issued by the Official Respondent is without jurisdiction and is illegal, therefore, set-aside. This Petition is accepted and pending applications are disposed of, but with a clarification that if the Respondents No.3 and 4 come across any other material or record, which is contrary to what has been observed herein above, they can initiate the proper proceeding in accordance with law.

Constitution Petition No. S-249 of 2022

Learned counsel for the Petitioner on instructions does not want to proceed further with this Petition. Consequently, this Petition No. S-249 of 2022 is dismissed as withdrawn along with pending application(s), if any.

JUDGE