

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-6177 OF 2023

Date

Order with signature of Judge

Present:

Mr. Justice Aqeel Ahmed Abbasi.

Chief Justice.

Mr. Justice Abdul Mobeen Lakho.

Asif Sakhi.....Petitioner

Versus

Federation of Pakistan & others.....Respondents

Date of hearing 20-12-2023

Mr.Rafiq Ahmed Kalwar, Advocate for the Petitioner.

Mr.Khalid Javed, Advocate for the Respondent No.2 along with Mr.Yousuf Kapda, Advocate.

Mr.Khaleeq Ahmed, D.A.G.

JUDGMENT

Abdul Mobeen Lakho-J, Through instant petition, the petitioner, representing All Pakistan Customs Agents Association, who is also a candidate for the Member Executive Committee and General Body in the FPCCI Elections for the year 2024-2025 has prayed as under:-

- A. Declare that the issuance of Impugned Letter dated 16.12.2023 by the Respondent No. 2 is illegal, unlawful, *vioid abinitio* without jurisdiction and in violation of the provisions of the Trade Organizations Act, 2013 and Trade Organizations Rules, 2013;
- B. Declare that any delay in holding the Elections of General Body and Executive Committee members of Respondent No. 2/FPCCI for the biennial elections for years 2023-2024 & 2024-25 by the Respondents would be illegal and unlawful and in violation of the provisions of the Trade Organizations Act, 2013 and Trade Organizations Rules, 2013;
- C. Declare that the acts of the Respondent No. 2 and its current management from denying the vested, legal and fundamental right of the Petitioner and fellow 19 Trade Organizations of participation in forthcoming FPCCI Elections 2024-2025 is illegal, unlawful, unauthorized and in violation of the provisions



of the Trade Organizations Act, 2013 and Trade Organizations Rules, 2013;

- D. Pass *ad interim* orders suspending the operation of Letter dated 16.12.2023 and further direct the Respondent No. 4 to discharge his statutory duties in accordance with Section 14 of the Trade Organizations, Act, 2013 and Rules framed thereunder”

2. Brief facts as narrated in memo of petition are that prior to promulgation of amendment through Trade Organization (Amendment) Act 2022, i.e. on 03rd November, 2022, the tenure of both the Office bearers and members Executive Committee of FPCCI was one year, but pursuant to the said provisions the tenure has been enhanced to two years; the last Elections for the Year 2022 of the FPCCI (Respondent No.2) were held on 30th December, 2021, therefore, as per the prevailing law when said Elections were conducted the tenure of the Office bearers and the members Executive Committee of the Respondent No.2 was for only for one year. But owing to some litigation the announcement of result was made by Election Commission vide Results dated 19.03.2022. Though the term of office bearers was enhanced through the said amendment in the Act, however, the tenure of the members Executive Committee remained same being one year pursuant to Section 11(2) of the Trade Organization Act, 2013, read with Rule 20 (11) of the Trade Organization Rules, 2013, thereafter, further amendment was made to enforce the Amendment Act from 1st January, 2022 and in line with the amendments made in the Trade Organizations Act, 2013, the Respondent No.1 vide its S.R.O.1057(1)/2023 dated 8th of August, 2023 amended the relevant rules and made the tenure of the members Executive Committee in harmony with the two years tenure of the Office bearers. However, if the subsequent amendments made in the relevant provisions of the Act and Rules are considered to have retrospective effect on the tenure of the present Office bearers and members Executive Committee, as stipulated under Section 11 of the Trade Organizations Act, 2013, and Rule 20(10) and (11) of



the Trade Organizations Rules, 2013, is set to complete on the 31st of December, 2023, therefore, with an object issue an election schedule for the elections of year 2024-2025, members of the Executive Committee of the Respondent No.2 held the 2nd ordinary meeting on 13.10.2023, wherein the Executive Committee and the Secretary General of Respondent No. 2 approved the election schedule for the upcoming election of Respondent No.2 and thereby invited Nominations of the Members for General Body and Executive Committee of the Respondent No.2 for the Elections of 2024-2025 vide Letter dated 14.10.2023 and also appointed an Election Commission for the forthcoming elections of 2024-2025 vide Letter dated 14.10.2023, which was objected by the Petitioner and other members of the Executive Committee, but the present management of Respondent No. 2 did not pay heed such objections, therefore, finding no other way, the a member of the Trade Organization lodged a formal complaint on 14.10.2023 to the Respondent No. 4, however, in response thereof, the Respondent No.2 replaced one of the member of the Election Commission to ensure fair and transparent conduction of elections. Meanwhile, the current management taking the benefit of an alleged irregularity in appointment of the Respondent No. 4, filed a C. P. No. D-5466 of 2023 to hamper the election process and vide Order dated 13.11.2023 passed by this Court in the aforementioned Petition, suspended the appointment of DGTO has also pleased to suspend the appointment of one member of the Election Commission of the Respondent No.2 in view of the complaints and reservations shown by the members Associations of the Respondent No.2. Simultaneously the Voters also filed a C.P. No. D-5600 of 2023 before this Court seeking prayer that Elections of the Respondent No.2 should be conducted in a fair and transparent manners without any hindrance and delay on notices were issued, while ordering that the said C.P. No. D-5600 of 2023 be taken up along with C.P. No. D-5466 of 2023. During pendency of the above mentioned Petitions a



fresh Notification dated 27.11.2023 was issued by the Respondent No.1, whereby the Federal Government was pleased to appoint the said individual as Regulator of Trade Organizations in terms of Section 13(1) of Trade Organizations Act, 2013 and vide Order dated 27.11.2023 was pleased to observe that grievance of the Petitioners in C.P. No. D-5466 of 2023 has been redressed and direct the Respondents to continue the process of Election in accordance with law and there shall be no hindrance. The Petitioner is seriously doubt the credibility of the holding of the free and fair Election for the year 2024-2025 particularly for the reasons highlighted in the foregoing paras.

3. Learned counsel for the petitioner argued that the act of the Respondent No.2 to exclude validly added Voters vide Addendum No.3 is not only illegal but also in violation of established legal norms as well as against the fundamental rights enshrined in the Constitution. Learned counsel for the Petitioner argued that Respondent No.2 is trying to cause delay in holding of the election in direct violation of Rule 13(a) of the Trade Organizations Rules, 2013, which explicitly bound the Respondent Nos.2 and 3 to conduct the elections of the Respondent No.2 between the period of October to December. He further argued that owing to illegal intentions of the current Office bearers and members Executive Committee to prolong their tenure, the Petitioner seriously doubt the credibility of their holding of the Elections 2024-2025 due to the reasons highlighted above. Learned counsel for the petitioner argued that the Office Bearers and member Executive Committee were elected in the year 2021, and if the amendments are to make effective retrospectively, the term of the present Office Bearers and members Executive Committee is clearly designed to complete on the 31" of December 2023, therefore, felt needs for an equitable the Elections of the Respondent No.2. He further argued that instant Petition is indispensable to safeguard the rights and interests of the Petitioner and fellow members who are



entitled to participate in elections and exercise their democratic right, which without timely elections and due participation, would be nullified. He further contended that the inability to conduct elections timely would not only ruin the trust of members in the democratic processes of trade organizations but also will cause disenchantment among members, whereas, timely elections, on the other hand, play a pivotal role in promoting transparency and accountability within trade organizations.

4. Per learned counsel for the petitioner, the Respondents are acting in blatant disregard and violation particularly to Rule 14(1)(a) and generally to Article 4 of the Constitution, which provides that "(1) To enjoy the protection of law and to be treated in accordance with law, which is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan." He further argued that the Petitioner and fellow members being subjected to unlawful and unjust discrimination by the Executive Committee members of the Respondent No. 2 and General Secretary, who are choosing to favor a specific group in direct contradiction to the law, established democratic norms and past practices, therefore, the actions of the Respondents are mala fide, unconstitutional and violative to the democratic norms. Learned counsel further argued that the proprietary of the transparency, appreciation and respect of the member voters demands that the fair and free elections of the Respondent No. 2 should be held timely with full participation of all the stake holders. He further said that the paramount importance of upholding the rule of law in any democratic society cannot be overstated. Ensuring that trade organizations adhere to statutory rules and election timelines is vital to preserve the rule of law and counter arbitrary actions detrimental to democratic principles. Per learned counsel, the purpose of filing of the instant petition by the Petitioner is to preserve and uphold the democratic principles and procedures outlined in the



Trade Organizations Act, 2013 and Rules thereto.

5. Mr.Khalid Jawed, Advocate present in Court on behalf of Respondent No.2 as well as learned D.A.G. raise the objection on the point of maintainability of instant petition on the ground that alternate and efficacious remedy is available to the petitioner to approach the appropriate forum, so also the Petitioner is not an aggrieved person to invoke the constitutional jurisdiction of this Court.

6. Heard the arguments. Under the facts and circumstances of the instant case, we would firstly address the question of maintainability of instant petition on the ground that how petitioner is aggrieved person arising in view of the impugned letter being appealable under Section 21 of the Trade Organization Act, 2013. It is easily be discerned from a plain reading of Section 21, in terms of subsection (2) thereof, any decision or order of the Regulator may be appealed before the Federal Government by any person or trade organization within the specified timeframe, whereas any final order or decision of the Federal Government involving a question of law, may prefer appeal within specified timeframe to the High Court under subsection (4). As such, the grounds raised by the Petitioner in challenging the impugned letter with reference to the particular provisions of the Trade Organization Act, 2013 and the Trade Organization Rules, 2013 could well have been taken within that appellate framework, which was not done, which states as under:-

“21. Appeal.—(1) Any person or trade organization aggrieved by any decision or order of the administrator may, within fourteen days of communication of such decision or order, prefer appeal to the Regulator.

(2) Any person or trade organization aggrieved by any decision or order of the Regulator may, within fourteen days of communication of such decision or order, prefer appeal to the Federal Government whose decision, subject to sub-section (4), shall be final.

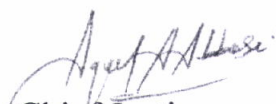
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(3) On appeal under sub-section (1) the Regulator or, as the case may be, the Federal Government may suspend the operation or execution of the decision or order appealed against until the disposal of such appeal.

(4) Any person aggrieved by the final order or decision of the Federal Government involving a question of law may, within thirty days of such order or decision, prefer appeal to the High Court.”

7. Needless to say, it is well settled that the jurisdiction under Article 199 of the Constitution is not to normally be exercised where an alternate remedy is provided in law, unless such remedy is illusory/inefficacious or the case is one where an actor otherwise amenable to issuance of a writ has acted in clear absence of authority/jurisdiction or indulged in an excessive exercise thereof. The petitioner's counsel also did not cite any precedent in support of his contentions nor explained how any fundamental right of the petitioner would be adversely affected. He also did not explain how the petitioner may be presumed to be 'aggrieved person' within the meaning of Article 199 of the Constitution.

8. In view of the foregoing reasons, instant petition was dismissed along with listed application vide short order dated 20.12.2023.


Chief Justice


Judge