

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

C.P No. D-4398 of 2024

Present:

Yousuf Ali Sayeed and
Arbab Ali Hakro, JJ

Karachi Chamber of Commerce &
Industry through its Secretary General.....Petitioner

Versus

Federation of Pakistan & others.....Respondents

Khalid Javed, Advocate for the Petitioner
Maz Waheed and Usman Khan, Advocates for the Intervener.
Kafeel Ahmed Abbasi, Additional Advocate General, Sindh.
Kazi Abdul Hameed Siddiqui, D.A.G. along with Ali Sufian Director,
DGTO, Islamabad.

Date of hearing : 20.09.2024

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner, a Trade Organization registered and licensed under Section 3 of the Trade Organizations Act, 2013 (the “**Act**”), has impugned three Orders made by the Director General of Trade Organisations (the “**DGTO**”), in exercise of his regulatory function under the Act and the Trade Organisations Rules, 2013 (the “**Rules**”) in the buildup to the election of 30 members of the Executive Committee (the “**Committee**”) of the Petitioner for the years 2024-26 (the “**Election**”), being Order No. 17/2024 dated 13.08.2024 (“**Order 17**”), Order No.34/2024 dated 23.08.2024 (“**Order 34**”) and another unnumbered Order dated 29.08.2024 (hereinafter collectively referred to as the “**Impugned Orders**”).

2. Succinctly stated, of the Impugned Orders, through Order 17 the Secretary General of the Petitioner was directed by the DGTO to share the voters list for the 2024-26 election according to their class of membership along with the details, as per Rule 18(3) of the Rules, 2013, which stipulates that there shall be two classes of members in a trade organization, except in a Chamber of small traders or association of small traders. Subsequently, through Order 34, the security fee Rs.100,000/- for contesting candidates that had been approved in an Annual General Body meeting held on 30.09.2023 was reverted to Rs.15,000/-, as the enhancement was not reflected in an amendment to Article 33(d) of the Memorandum and Articles of Association (the "**M&AoA**") of the Petitioner or approved by the DGTO, and polling for the Election through electronic means was disallowed as there was no specific provision for the same in the Act or Rules. Vide the Order dated 29.08.2024, the Petitioner was then called upon by the DGTO to submit a report as to compliance of the earlier two Orders.

3. Proceeding with his submissions, learned counsel for the Petitioner submitted that the Impugned Orders were illegal, and had been made without jurisdiction or justification so as to create unnecessary hurdles in the process of the Election, the Schedule of which had been announced by the three-member election commission and the matter had since proceeded to an advanced stage, where, after due scrutiny, the final list of 16863 eligible voters had been issued and circulated, with polling set to take place on 21.09.2024 keeping in view that there was a deadline for completion of the exercise by 30.09.2024 through operation of the Act and Rules.

4. He argued that the preliminary steps towards the electoral process were commenced before March of each year as the membership was renewed annually by 31st March, with the eligibility of voters being scrutinised at the time of renewal and the Preliminary List of eligible voters having thus been prepared for purpose of the Election and then issued/circulated on 15.07.2024, and the electoral process was too far advanced for the membership to be scrutinized and segregated for purpose of separate lists to be prepared. He submitted that previous elections for the Committee had also been held on the basis of a single voter list. Furthermore, he submitted that electronic voting and the enhancement of the security deposit were measures that had been approved by the General Body of the Petitioner and acted upon in elections held in previous years. He submitted that Order 17 and Order 34 had already been challenged by the Petitioner through separate Appeals under Section 21(2) of the Act, but as the same were to be heard by the Federal Cabinet by application of the principle laid down by the Supreme Court in the case of Mustafa Impex, the remedy was not efficacious, with no opportunity of hearing having been afforded so far in the matter.

5. Conversely, learned counsel for the respondent No. 5, an associate member of the Petitioner that had made the complaint to the DGTO underpinning Order 17 and been added as a party to the Petition on its application under Order 1 Rule 10 CPC, submitted that the Impugned Orders had been made by the DGTO in accordance with the Act and Rules in consonance herewith and the M&AoA, hence did not suffer from any infirmity. He referred to Clause 4 of the Articles and Rules 11(7) and 21(5) of the Rules read with Rules 2 (b) and (g) thereof.

6. A perusal of the Articles of the Petitioner reflects that it specifically contemplates that its membership will be of two classes, namely (i) Associate Members and (ii) Corporate Members, with an “Associate Member” being defined as “a member of the Chamber which is not a body corporate or a multinational or a sales tax registered manufacturing concern or sales-tax-registered business concern having annual turn-over of not less than fifty million Rupees” and Corporate Member being defined to mean “a member of the Chamber which is either a body corporate or a multinational corporation with its heads office or branch office in Pakistan or a sales-tax registered manufacturing concern or a sales-tax-registered business concern having annual turn-over of not less than fifty million Rupees”. The requirement of such a class distinction is also prevalent in terms of the Rules, with Rule 11(7) stipulating that “there shall be two classes of memberships in a trade organization, except chamber of small traders and association of small traders” and Rules 21(5), to the extent relevant from the standpoint of the Petitioner envisaging that “at least fifty per cent of members of the executive committee shall be from the corporate class” and that “the electoral college for each class of members of the executive committee shall be members of the general body from the respective class”, with the definitions of the two classes for purpose of the Rules in terms of Rules 2 (b) and (g) being in consonance with the definitions encapsulated in the Articles.

7. Furthermore, on query posed, it was conceded on behalf of the Petitioner that the enhancement of security deposit and provision for electronic voting had not been approved through the DGTO and/or incorporated in its M&AoA.

8. That being said, it must be borne in mind that the Constitutional jurisdiction under Article 199 of the Constitution does not present a substitute for the appellate hierarchy established under the Act and Rules, and while exercising such jurisdiction this Court would at best examine the matter from an administrative rather than appellate lens. As such, in the given backdrop, it falls to be considered that the Impugned Orders cannot be said to be unreasonable, in terms of being either illegal, irrational or suffering from any procedural impropriety, hence no interference is warranted through the present proceeding.

9. It is for the foregoing reasons that the Petition was dismissed vide a short Order made in Court upon culmination of the hearing on 20.09.2024.

JUDGE

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