

IN THE HIGH COURT OF SINDH HYDERABAD CIRCUIT

C.P. No. S-646 of 2014

[Engro Foods Ltd. Versus Registrar of Trade Union & others]

Petitioner : Engro Foods Ltd. through Mr. Faisal Mahmood Ghani, Advocate.

Respondents 1&4 : Nemo.

Respondent No.2 : Engro Dairy Farm Mazdoor Union through Mr. Jamshed Ahmed Faiz, Advocate.

Respondents 3&5 : Azhar Mumtaz Agri Farm and Fodder Supplier and another through Ch. Azhar Elahi, Advocate.

Respondent No.6 : The Secretary Labour, Government of Sindh through Mr. Ayaz Ali Rajpar, Assistant Advocate General, Sindh.

Date of hearing: 25-10-2021 & 04-11-2021

J U D G M E N T

Adnan Iqbal Chaudhry J. - The Petitioner, Engro Foods Limited, claims to have factories at Sukkur and Sahiwal and its head office at Karachi. As part of its dairy business, the Petitioner also has a dairy farm at Deh Gandaho, Tehsil Salehpat, Sukkur. The workers at the dairy farm formed a trade union under the name and style '*Engro Dairy Farm Mazdoor Union Nara*' (Respondent No.2), which was then registered by the Registrar trade unions, Hyderabad Region (Respondent No.1) under the Sindh Industrial Relations Act, 2013 [SIRA] vide registration certificate dated 11.03.2014.

2. The Petitioner made a representation dated 26.03.2014 to the Registrar trade unions for making a complaint to the Labour Court under section 12 of the SIRA for cancelling the registration of the Respondent No.2 on the ground that it was obtained by misrepresentation and was contrary to the provisions of the SIRA.

That request was denied by the Registrar by letter dated 07-08-2014. In the meanwhile, the Respondent No.2 applied to the Registrar under section 24 of the SIRA for certificate of a Collective Bargaining Agent [CBA]; hence the petition.

3. The memo of petition contended that workers at the dairy farm were not the Petitioner's employees, rather they were employees of third-party contractors (Respondents 3 to 5) to whom the Petitioner had outsourced workforce for the farm; that in any case, majority of the members of the Respondent No.2 were not even workers at the farm; and that some of them were already members of a trade union of the labour contractor's establishment. It was pleaded that since the Respondent No.2 had now applied under section 24 of the SIRA for certificate of a CBA for the Petitioner's establishment, a right had accrued to the Petitioner to question the registration of the Respondent No.2. The prayer in the petition was as follows:

“(a) Registration Certificate by the Respondent No.1 is in violation of law, hence liable to be set-aside;

(b) Order for the cancellation of registration of Respondent No.2 having been registered in contravention to law;

(c) In the alternative, the Respondent No.1 apply to the Labour Court of competent jurisdiction for orders of cancellation of the said Union on the ground that the same stood registered in violation to law;

(d) That further in the alternative, the Respondent No.2 be directed to amend its constitution and deleting the name of “Engro” and “Engro Dairy Farm” as employer and instead adding the name of Respondents No.3 to 5 as employer; and further Respondent No.1 be directed to make necessary amendments in the records along with amendment in the Registration Certificate (Annexure C);

(e) It is further prayed that proceedings for determination of Collective Bargaining Agent may kindly be stayed as per law laid down by the Hon'ble High Court in the case reported as 2010 PLC 148 cited here-above.

(f) To grant such further and or appropriate relief as the Hon'ble Court may deem fit under the circumstances.”

4. By an interim order dated 20-08-2014, this Court restrained the Registrar from issuing a CBA certificate to the Respondent No.2.

5. The reply of the Respondent No.2 was, that in law the workers employed at the Petitioner's farm through a labour contractor were nonetheless employees of the Petitioner; that as an employer, the Petitioner had no *locus standi* to challenge a trade union's registration; that in any case, an alternate remedy was available to the Petitioner in section 43 of the SIRA; that the allegation that some members of the Respondent No.2 were not workers at the farm, was a disputed question of fact which could not be examined in writ jurisdiction; and that under section 12 of the SIRA it was the prerogative of the Registrar to apply for cancellation of a trade union's registration, not that of the employer.

6. In filing comments, the Registrar trade unions (Respondent No.1) and the Secretary Labour, Government of Sindh (Respondent No.6) supported the case of the Respondent No.2. It was further contended by the Registrar that the petition was premature as proceedings under section 24 of the SIRA for determining the Respondent No.2 as a CBA were pending. The labour contractors (Respondents 3 and 5) supported the case of the Petitioner.

7. On 19-04-2018, the Petitioner moved CMA No.1864/2018 for permission to urge an additional ground, viz. that the Petitioner is a 'trans-provincial establishment' as defined under Federal law, the Industrial Relations Act, 2012 [IRA], and therefore the Registrar trade unions under Provincial law, the SIRA, did not have jurisdiction to register the Respondent No.2 as trade union or to certify it as a CBA. The reason given for not pleading such ground at the outset was that at the time the petition was filed the *vires* of the IRA were under challenge before the superior courts, and it had yet to be determined whether the IRA was competent legislation, which point was subsequently decided by the Supreme Court *vide* judgment dated 28-03-2018 in *Sui Southern Gas Company Ltd. v. Federation of Pakistan* (2018 SCMR 802).

8. At the hearing, CMA No.1864/2018 was not opposed by any of the Respondents, and the ground that the Petitioner was a trans-provincial establishment beyond the purview of the SIRA was the principal argument advanced by the Petitioner's counsel against the registration of the Respondent No.2 as trade union. Nevertheless, since that argument goes to the very jurisdiction of the Registrar trade unions, it will have to be examined in deciding this petition. Therefore, CMA No.1864/2018 is allowed.

9. In support of the contention that it is a trans-provincial establishment, the Petitioner produced a certificate dated 31-03-2008 issued by the Directorate of Labour Welfare, Government of Punjab, which affirmed that the Petitioner has a factory at Sahiwal, Punjab. Further, under cover of a statement dated 26-10-2021, the Petitioner also placed on record a registration certificate dated 24-06-2019 issued to the '*Workers Union Engro Foods Ltd.*' by the Registrar trade unions under the IRA in relation to the Petitioner's establishment, and a certificate of CBA issued to that trade union under the IRA w.e.f. 21-01-2020. Mr. Faisal Mehmood Ghani, learned counsel for the Petitioner submitted that these documents conclusively established that the Petitioner was a trans-provincial establishment; that after the case of *Sui Southern Gas Company* (2018 SCMR 802) it is settled that no trade union or CBA can be registered under the SIRA in relation to a trans-provincial establishment; and that in any case, there cannot be two CBAs in relation to the same establishment at the same time. Without prejudice to that, learned counsel also made submissions on the grounds narrated in para 3 above, and in support thereof he relied on *Hakimsons Chemical Industries (Pvt.) Ltd. v. Registrar of Trade Unions (West), Government of Sindh* (1999 SCMR 234).

10. On the other hand, Mr. Jamshed Ahmed Faiz, learned counsel for the Respondent No.2 submitted that the case of *Sui Southern Gas Company* had no relevance because the question whether an establishment is trans-provincial is always a question of fact, and one

which cannot be decided in writ jurisdiction. He submitted that by virtue of Article 17 of the Constitution and section 3 of the SIRA, the right of workers to form and register a trade union was a fundamental right, and the employer has no *locus standi* to object to the same as held by the Supreme Court in *Essa Cement Industries Workers Union v. Registrar of Trade Unions, Hyderabad Region* (1998 SCMR 1964). He submitted that the role of the employer is envisaged only at the time of determining a CBA under section 24 of the SIRA; that the employer as an alternate remedy in section 43 of the SIRA, and not by way of section 12, which authorized only the Registrar to apply to the Labour Court for cancellation of a trade union's registration.

11. Heard the learned counsel and perused the record with their assistance.

12. At the outset I note that both section 2(ix) of the SIRA and section 2(x) of the IRA define an 'establishment' to mean any office, firm, factory, society, undertaking, company, shop, or enterprise which employees workmen "directly or through a contractor" for the purpose of carrying on business or industry. Again, section 2(xxxii) of the SIRA and section 2(xxxiii) of the IRA define 'worker' and 'workman' as a person who is employed in an establishment or industry "either directly or through a contractor ...". Therefore, the Petitioner's argument that workers at its dairy farm are to be taken as employees of the labour contractors and not employees of the Petitioner, does not have any force. The same argument has been declined by the Supreme Court in *Sui Southern Gas Company Ltd. v. Registrar of Trade Unions* (2020 SCMR 638).

13. The thrust of the submissions of Mr. Jamshed Faiz, learned counsel for the Respondent No.2, was premised on the case of *Essa Cement Industries Workers Union v. Registrar of Trade Unions, Hyderabad Region* (1998 SCMR 1964) where the Supreme Court had held that an employer cannot claim *locus standi* to challenge the decision of the

Registrar merely on the ground that the employer was not provided opportunity of hearing or objections before registration of the trade union. However, that finding, of course, did not rule out scrutiny in constitutional jurisdiction of the Registrar's decision for jurisdictional defects, which aspect was clarified in *Essa Cement* itself as follows:

"7. So far as the first contention of the learned counsel is concerned, there can be no cavil with the proposition that jurisdictional facts are not immune from scrutiny by the High Court in the exercise of its Constitutional jurisdiction and even if it was not possible for the Court to itself embark upon an enquiry in this regard, the matter could be referred to the Registrar for further enquiry.

10. It is pertinent to notice that although, registration of a trade union may be cancelled in case it has contravened or has been registered in contravention of any of the provisions of the I.R.O. it would be beyond the Registrar's competence to pass such order unless the Labour Court so directs. No doubt, the High Court in the exercise of its Constitutional jurisdiction may order the Registrar to seek such directions from the Labour Court, as required by section 10, but the same would depend upon the circumstances of each case. The circumstances of the present case did not warrant such interference by the High Court as the petitioners have failed to establish that the discretion vesting in the Registrar was not properly exercised."

14. It is a fact that the Petitioner did not take the ground of trans-provincial establishment before the Registrar in making its representation dated 26-03-2014 against the Respondent No.2. However, it was only after the Respondent No.2 had been registered as a trade union under the SIRA, and after the Petitioner had already made its representation that it came to be held, first by the Full Bench of this Court on 04-08-2014 in *KESC v. NIRC* (PLD 2014 Sindh 553 = 2015 PLC 1), and then on 28-03-2018 by the Supreme Court in *Sui Southern Gas Company Ltd. v. Federation of Pakistan* (2018 SCMR 802), that in view of Article 141 of the Constitution, even after the Eighteenth Amendment it was the Federal legislature and not the Provincial legislature that had legislative competence to regulate trade unions in relation to trans-provincial establishments; and thus trans-provincial establishments were to be regulated exclusively

under Federal law i.e. the IRA, not under Provincial law such as the SIRA.

15. Section 2(xxxii) IRA defines 'trans-provincial' to mean "any establishment, group of establishments, industry, having its branches in more than one province". However, the question whether an establishment is trans-provincial, is a question of fact. It may well be that a provincial establishment subsequently becomes a trans-provincial establishment, or *vice versa*. In *Pakistan Telecommunication Company Ltd. v. Member NIRC* (2014 SCMR 535), the Supreme Court held that once it was established through any means that the employer was a trans-provincial establishment, then the IRA, being Federal law, would become applicable to such establishment, and by virtue of Article 143 of the Constitution the provincial industrial relations law would be overridden. Consequently, it follows that even if registration of the Respondent No.2 under the SIRA was lawful at the relevant time, if it is subsequently established that the Petitioner is a trans-provincial establishment, the registration of the Respondent No.2 under the SIRA would be overridden, and then, all other grounds raised for challenging such registration recede to the background, and the question whether section 43 SIRA provides an alternate remedy to the Petitioner, would also not arise.

16. Accepted that the question whether the Petitioner is a trans-provincial establishment is a question of fact, but here that fact is already established by way of the registration certificate dated 24-06-2019 issued to the 'Workers Union Engro Foods Ltd.' under sections 9 and 10 of the IRA in relation to the Petitioner's establishment, and the certificate of CBA issued to the same trade union under section 19 of the IRA w.e.f. 21-01-2020. These certificates were not disputed by the Respondents. These certificates manifest that the Petitioner is recognized as a trans-provincial establishment by the Registrar trade unions under the IRA. As already discussed, the consequence is that the registration certificate issued to the

Respondent No.2 as trade union under the SIRA stands overridden or superseded by the subsequent certificate issued under sections 9 and 10 of the IRA, and the former certificate has no further legal effect. Resultantly, the proceedings pending before the Registrar under section 24 of the SIRA to determine a CBA in relation to the Petitioner's establishment, also abate. The Registrar of trade unions under the SIRA shall amend his register accordingly. Petition is allowed in said terms.

JUDGE

*PA/SADAM