

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

C. P. No. D-8123 of 2022

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

Petitioners : The Federation of Pakistan Chambers of Commerce and Industry & others, through Khalid Javed, Advocate.

Respondent No.1 : The Federation of Pakistan, through Kazi Abdul Hameed Siddiqui, DAG.

Respondent No.2. : The Regulator Trade Organizations, Directorate General of Pakistan, through Muhammad Adnan, Law Officer, TDAP and Ali Sufiyaan, Director General, Trade Organizations.

Interveners : Ahmed Chinoy & others through Muhammad Rafique Kalwar, Advocate.

Date of hearing : 09.05.2023.

ORDER

YOUSUF ALI SAYEED, J. - In the wake of an amendment made to Section 11 of the Trade Organization Act, 2013 (the “**TOA**”) through the Trade Organization (Amendment) Act, 2022 (the “**Amending Act**”) so as to extend the tenure of the office bearers of the Federation of Pakistan Chamber of Commerce and Industry (the “**FPCCI**”) from one year to two years, the FPCCI and some of its elected office bearers as well as members of its Executive Committee or General Body, as the case may be, have invoked the jurisdiction of this Court under Article 199 of the Constitution seeking that a corresponding amendment be made to certain provisions of the Trade Organization Rules, 2013 (the “**TORs**”) so that the tenure of the present office bearers, members of the Executive Committee and/or General Body be reckoned accordingly.

2. Towards that end, the Petitioners have prayed *inter alia* that this Court may be pleased to pass orders declaring, directing and holding:

“A). That upon amendments made by the Parliament in the T.O. Act 2013 by way of T.O. (Amendment) Act 2022, the Federal Government is required and is duty bound to make necessary amendments in the T.O. Rules 2013 by exercising powers conferred by Section 31 of T.O. Act 2013;

B). To hold that the tenure of Executive Committee of Petitioner No.1 FPCCI is two years in consonance with the tenure of Office Bearers which has been increased from one year to two years by the aforesaid T.O. (Amendment) Act 2022 which has been made effective from 01.01.2022;

C). Pass appropriate orders restraining the Respondents their Officers, Employees and Sub-Ordinates from taking over Petitioner No.1 FPCCI, from taking any coercive or adverse action against the Petitioner No.1 FPCCI, its Office Bearers, Members Executive Committee and Members General Body in any manners;

D). Pass orders restraining the Respondents their Officers, Employees and Sub-Ordinates from denying the vested, legal, fundamental rights of the Office Bearers, Members Executive Committee and Members General Body of Petitioner No.1 FPCCI, from interfering and from creating any hurdle or taking any action whereby curtailing or denying their two years tenure w.e.f. 01.01.2022 to 31.12.2023;

E). To Pass orders restraining the Respondents from taking any action adversely effecting the Petitioners-Office Bearers, Members Executive Committee and General Body U/s. 16 of T.O. Act-2013;

F). To Pass orders as an interim measures thereby protecting the legal, fundamental rights of the Petitioners’ Office Bearers, Executive Committee and General Body;

G) ...”

3. The backdrop to the matter is that the FPCCI is a Trade Organization licensed in terms of the TOA, and is accordingly regulated by the Regulator of Trade Organizations (the “**RTO**”) in terms thereof as well as the TORs made by the Federal Government in exercise of powers conferred by S.31 of the parent statute, with its organizational structure having been laid down in terms of Rule 20 of the TORs, the relevant provisions of which stipulate as follows:

20. Organizational structure of the Federation.—(1) The Federation shall comprise a president, a senior vice president, twelve vice-presidents, an executive committee and a general body.

(2) The general body of the Federation shall comprise the representatives, nominated by each licensed chamber, association, association of small traders, women’s chamber and chamber of small traders subject to the following:—

(a) two representatives shall be nominated from each licensed chamber, association, women’s chamber and chamber of small traders and association of small traders;

(b) the representatives shall be members of the nominating trade organization;

(c) in case of a chamber or women’s chamber, one representative shall be nominated from each class of members provided in sub-rule (7) of Rule 11; and

(d) in case of an association, at least one representative shall be nominated from the corporate class;

(e) in case of chamber of small traders and association of small traders, the concerned trade organization shall nominate one of its nominees to represent the trade body in executive committee and the other one to represent the trade body in the general body of the Federation.

(3) The general body constituted under sub-rule (2), in addition to the functions and responsibilities assigned to it in the memorandum and articles of association of the Federation, shall, subject to the provisions of sub-rule (4), serve as the electoral college for election of the office-bearers of the Federation.

(4) The executive committee of the Federation shall comprise one out of the two representatives nominated on the general body by each trade organization as provided in sub-rule (2). While making nomination under sub-rule (2) each trade organization shall indicate as to which of the two nominees shall represent it.

(5) ...

(6) ...

(7) ...

(8) The president, the senior vice-president and vice-presidents of the Federation shall be elected from amongst members of the executive committee.

(9) ...

(10) The tenure of all office-bearers and members of executive committee of the Federation shall be one year.

4. Section 11 of the TOA, as it stood prior to the Amending Act, provided as follows:-

“11. Organisation and tenure of office-bearers and executive committee of trade organisations.

(1) Notwithstanding anything in any other law for the time being in force and memorandum and articles of association of any existing trade organisation the tenure of office-bearers of all trade organisations shall be one year,

(a) in the case or the Federation of Pakistan Chambers of Commerce and Industry from the 1st day of January to the 31st day of December;

(b) in the case of all other trade organisations, from the 1st day of October to the 30th day of September,

(2) The organisational structure of trade organisations including composition and tenure of Executive Committees and the manner of their elections shall be such as prescribed.”

5. Through the Amending Act, Section 11 of the TOA was amended with effect from 01.01.2023, with the words “one year”, as appearing in sub-section (1) thereof being substituted for the words “two years” and the expression “to the 31st day of December” appearing in Clause (a) being omitted.

6. As is discernable from the prayers advanced, the case of the Petitioners is that appropriate amendments ought to have been made in the TORs as a corollary to the amendment made to Section 11 of the TOA so as to harmonize the tenure of the FPCCI's office bearers and Members of its Executive Committee and General Body in consonance with the extended period. Learned counsel thus argued with reference to Rule 20, particularly sub-rule (10), that the TORs were liable to be amended so as to bring them in accord with the amendment to S.11 of the TOA, and that the tenure of the present office bearers and executive committee ought to be reconciled as such.

7. The comments submitted on behalf of the Respondents, being the Federation of Pakistan and the Director General of Trade Organizations, reflect that:-

“2. After being passed by the Joint Session of Parliament, TO (Amendment) Act, 2022 was published in the Gazette of Pakistan on 2nd November 2022 (Act XXVII of 2022), whereby the tenure of the office bearers of FPCCI and lower tier trade organizations has been increased from one year to two years w.e.f 1st January, 2022...”

“4. Pursuant to the amendment in TOA, 2013 vide Act XXVII of 2022, Respondent No.2 has initiated consultation with the stakeholders to draft corresponding amendments in Trade Organizations Rules (TOR), 2013.”

“7. ... that prior to the recent amendment in TOA, 2013, the terms of the office bearers was one year. The term of the office bearers of FPCCI and other trade organizations, prior to the recent amendment in TOA, 2013, was 1st January to 31st December and 1st October to 30th September respectively.”

“11. ... that it would be appropriate to increase the tenure of the office bearers of TOAs to two years.”

“18. ... Section 11 (2) of TOA, 2013 provides that tenure of Executive Committees and the manner of their elections shall be such as prescribed, that is in TOR, 2013, which are under process for amendments, which shall clarify position regarding tenure of the Executive Committee as well as the conduct of elections within the registered TOs including FPCCI under the new amendments in the Section 11 of Trade Organization Act, 2013.”

8. With reference to those comments, it was submitted by the DGTO that pursuant to the amendment of S.11 of the TOA, the Regulator had initiated consultation with all stakeholders to draft corresponding amendments in the TORs, and whilst the present amendment was applicable to the extent of office bearers, the subject of amendment of the TORs from the standpoint of election and tenure of the executive committee was under deliberation. It was submitted that such amendments were in process and it was envisaged that the same would be brought about shortly, but in the meanwhile the Regulator remained duty-bound to implement the subsisting provisions of the TOA and TORs in letter and spirit.

9. During the course of proceedings, certain persons professing to be representatives of the members of the FPCCI and to have previously been its Office Bearers or members of its Executive Committee had come forward as Interveners so as to oppose the Petition. Learned counsel appearing on their behalf submitted that the Petitioners had misconstrued S.11 of the Act, as amended, as there was a distinction between the office bearers of the FPCCI and its Executive Committee, with each being defined distinctly and separately as per S.2(e) and S.2(k) of the TOA. It was submitted that whilst the tenure of office bearers had been enhanced from one year to two years through the Amending Act, the tenure of the Executive Committee was dealt with separately and had not been altered.

10. Learned counsel argued that Rule 20(10) *inter alia* provided that the tenure of the members of the Executive Committee of the FPCCI shall be one year, hence the tenure of the lastly elected members of the Executive Committee expired on 31.12.2022 and the incumbents were no longer lawfully holding such posts.

11. We have considered the arguments advanced in light of the relevant provisions of the TOA and TORs as well as the comments of the Regulator.

12. It is apparent from the comments and stance of the Regulator that the subject of appropriate amendments to the TORs in light of the amendment made to S.11 of the TOA in terms of the Amending Act is under consideration, with it being stated that the matter was set to be addressed shortly.

13. Under such circumstances, we leave it to the Respondents to consider the matter and make such amendments in the TORs as may be deemed appropriate, pending which we leave it to the Regulator to suitably superintend and control the affairs of the FPCCI in accordance with law.

14. The Petition thus stands disposed of in such terms.

JUDGE

CHIEF JUSTICE

Karachi.
Dated: