IN THE HIGH COURT OF SINDH, KARACHI

C.P.NO.D- 3195/2010
KESC and ors. Vs. N.I.R.C. & Ors.

alongwith following connected petitions

C.P.NO.D-2424/09
Haji Muhammad Yaqoob vs. Full Bench, NIRC

C.P.No.D-1049/10
M/s Shell Pakistan vs. NIRC & Ors.

C.P.No.D-1287/10
Noor Muhammad vs. Member, NIRC

C.P.No.D-1329/10
Imran Ali vs. NIRC and Ors.

C.P.No.D- 1410/10
KESC Ltd. Vs. Province of Sindh & Ors.

C.P. No.D- 1473/10
Federation of Textile Garments vs. NIRC

C.P.No.D- 2645/10
Pakistan Machine Tool vs. Govt. of Sindh & Ors.

C.P.No.D- 3196/10
KESC vs. Fed. Of Pakistan & Ors.

C.P.No.D- 1016/11
Younus Khan vs. M/s Regent Plaza Hotel & Ors.

C.P.No.D 1056/11
Khalil vs. NIRC & Ors.

C.P.No.D- 1244/11
Mirza Maqsood Ahmed vs. Fed. Of Pakistan & Ors.

C.P.No.D-2188/11
KESC Labour Union vs. Fed. Of Pakistan & Ors.

C.P.No.D -248/11
Chevron Pakistan Ltd. Vs. Member, NIRC

C.P.No.D- 2701/11
KESC Ltd. Vs. Member, NIRC & Ors.

C.P.No.D- 271/11
PSO Ltd. Vs. Fed.of Pakistan & Ors.

C.P.No.D- 2759/11
National Bank of Pakistan vs. Fed.of Pakistan & Ors.

C.P.No.D- 2779/11
Shell Pakistan Ltd. Vs. Fed. Of Pakistan & Ors.

C.P.No.D- 2849/11
M/s Chevron Pakistan vs. NIRC & Ors.

C.P.No.D- 2947/11
KESC vs. Member, NIRC

C.P.No.D- 2948/11
KESC vs. NIRC

C.P.No.D- 3530/11
KESC vs. NIRC

C.P.No.D-1818/12
Tuwairqi Steel Mills Ltd. Vs. Fed. Of Pakistan & Ors.

C.P.No.D- 2603/12
Coca Cola Beverage vs. Fed. Of Pakistan & Ors.

C.P.No.D- 3179/12
Fauji Fertilizer Employees Union vs. Fed.of Pakistan & Ors.

C.P.No.D- 498/12
Gerry's Dnata (Pvt) vs. Fed. Of Pakistan & Ors.

C.P.No.D-581/12
Abdul Ghaffar Memon vs. Fed. Of Pakistan and ors.

C.P.No.D-743/12
Pakistan Television Corp. Alliance vs. Fed. Of Pakistan

C.P.No.D-153/12
KESC vs. Fed. Of Pakistan & Ors.

C.P.No.D-1762/12
Ali Akbar vs. NIRC

C.P.No.D-2599/12
Coca Cola Beverage vs. Fed.of Pakistan

C.P.No.D-2600/12
Coco cola Beverages vs. Fed.of Pakistan

C.P.No.D- 2601/12
Coca Cola Beverages vs. Fed. Of Pakistan

C.P.No.D-2602/12
Coca Cola Beverages vs. Fed.of Pakistan

C.P.No.D-283/12
National Insurance Corporation. Vs. Fed.of Pakistan

C.P.No.D-304/12
National Insurance Corporation Vs. Fed.of Pakistan

C.P.No.D-4184/12
KESC vs. Fed.of Pakistan

C.P.No.D-4447/12
M/s PSO & Ors. Vs. NIRC & Ors.

C.P.No.D-643/12
Jawad Sadiq vs.NIRC

C.P.No.D-658/12
M.Humayun and ors. Vs. NIRc & Ors.

C.P.No.D-684/12
UBL workmen Union vs. NIRC & Ors.

C.P.No.D-1642/12
KESC vs. Fed. Of Pakistan & Ors.

C.P.No.D-174/13
M/s Maersk Pakistan (Pvt) Ltd vs. Fed.of Pakistan & Ors.

C.P.No.D-1058/13
Pakistan Telecommunication Co. Ltd. vs. Fed.of Pakistan & Ors.

C.P.No.D-1059/13
Pakistan Telecommunication Co. Ltd. vs. Fed.of Pakistan & Ors.

C.P.No.D-1060/13
Pakistan Telecommunication Co. Ltd. vs. Fed.of Pakistan & Ors.

C.P.No.D-1061/13
Pakistan Telecommunication Co. Ltd. vs. Fed.of Pakistan & Ors.

C.P.No.D-1062/13
Pakistan Telecommunication Co. Ltd. vs. Fed.of Pakistan & Ors.

C.P.No.D-1903/13
M/s National Bank of Pakistan vs. Fed.of Pakistan & Ors.

C.P.No.D-2269/13
KESC vs. Fed.of Pakistan & Ors.

PRESENT: **Mr. Justice Faisal Arab**
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Salahuddin Panhwar

Dates of hearing: 02.09.2013, 03.09.2013, 04.09.2013, 09.09.2013, 11.09.2013, 12.09.2013, 16.09.2013 & 18.09.2013.

Date of judgment: 04.08.2014.

Mr. Mehmood Abdul Ghani, Advocate.
Mr. Muhammad Sarwar Khan, Additional Advocate General.
Mr. Rashid Anwar along-with Mr. Mustafa Ali, Advocates.
Mr. Muhammad Humayoon, Advocate.
Ch. Muhammad Ashraf, Advocate.
Mr. Moin Azhar Siddiqi, Advocate.
Mr. Ashraf Hussain Rizvi, Advocate.
Mr. Muhammad Atiq Qureshi, Advocate.
Mr. Jhanzeb Inam, Advocate.

Mr. Makhdoom Ali Khan, Mr. Hyder Ali Khan, Mr. Najeeb Jamali & Mr. Sami-ur- Rehman, Advocates.
Mr. Rasheed Ahmed Razvi and Mr. Jamal Bukhari, Advocates.
Mr. Salahuddin Ahmed and Chaudhry Atif, Advocates.
Mr. Muhammad Aslam Butt, Deputy Attorney General.
Mr. Haleem Siddiqi, Advocate.
Mr. S.Shoa-un- Nabi, Advocate.
Mr. Muhammad Azam Khan Azmati, Advocate.
Mr. Latif Sagar, Advocate.
Malik Naeem Iqbal, Advocate & Malik Altaf Javaid, Advocates.
Mr. Shabbir Shah, advocate.
Mr. Muhammad Rafique Malik, Advocate.
Mr. Zia-ul- Haq Makhdoom, Advocate alongwith Mr. Muhammad Azhar Mahmood and Mr. Faisal Aziz, Advocates.
Mr. Kashif Hanif, Advocate.
Mr. Abdul Ghaffar Khan, Advocate.
Mr. Sanaullah Noor Ghori, Advocate.
Mr. Azhar Elahi, Advocate.
Mr. Khalid Imran, Advocate.
Mr. Muhammad Rafi Kamboh, Advocate.
Mr. Faiz Muhammad Ghanghro, Advocate.
Mr. Nishat Warsi,Advocate.
Mr. Farhatullah, Advocate.

JUDGMENT

Faisal Arab, J: Prior to the Eighteenth Constitutional Amendment, the subjects of formation of trade unions and settlement of industrial disputes were enumerated in Entries No. 26 and 27 of the Concurrent Legislative List of the Constitution. Being on the Concurrent List, these subjects were within the legislative competence of the Parliament as well as the Provincial legislatures. In the year 2010, the devolution plan carried out under the Eighteenth Amendment abolished the Concurrent Legislative List from the Constitution. All subjects which are not covered by any entry in the Federal Legislative List now fall within the legislative competence of the Provinces. In the year 2012, the Parliament enacted the Industrial Relations Act, 2012. This law deals with the subjects of formation of trade unions and settlement of industrial disputes relating to only such establishments that operate in Islamabad Capital Territories or at trans-provincial level. The *vires* of Industrial Relations Act, 2012 are being challenged in these proceedings on the ground that it impinges upon the provincial autonomy as the subjects it touches upon are not enumerated in the Federal Legislative List. These subjects it is claimed now fall exclusively within the legislative competence of the provincial legislatures only. As a very important constitutional issue is involved in all these connected petitions, the Division Bench on 09.05.2011 considered it appropriate to refer the matter to the Chief Justice with a request to constitute a larger bench to decide the issue. The larger bench was accordingly constituted on 25.05.2011. After preliminary hearings, the larger bench framed the following questions on 20.05.2013 for its decision:-

I. Whether the Industrial Relations Act, 2012 is ultra vires of the constitution?

II. What legal remedies are available to the employees / workers who are employed in a company/corporations/ institutions established in two different Provinces?

2. From the pleadings of the parties two competing stands have emerged. One is that of the employers and the other of the workmen of establishments that operate at trans-provincial level. The stand of the employers is that in the post Eighteen Amendment scenario, Industrial Relations Act, 2012 is *ultra vires* of the Constitution as the subjects it covers i.e. formation of trade unions and settlement of industrial disputes are not enumerated in any of the entries of the Federal Legislative List and legislation on these subjects fall exclusively within the legislative competence of the provincial legislatures. The stand of the Province of Sindh taken through its Additional Advocate General is the same as that of the employers i.e. Industrial Relations Act, 2012 is *ultra vires* of the Constitution. On the other hand, the stand of the workmen is that the Parliament in given circumstances was well within its rights to legislate on matters such as formation of trade unions and settlement of industrial disputes relating to establishments that operate at trans-provincial level as the Provincial Assemblies are not empowered to make laws having operation beyond its territories. The Federal Government through Deputy Attorney General has defended the impugned enactment.

3. Mr. Mehmood Ahmed Ghani, Chaudhry Muhammad Ashraf, Mr. Muhammad Humayoon, Mr. Rashid Anwar, Mr. Moin Azhar Siddiqi, Mr. Ashraf Hussain Rizvi, Mr. Jhanzeb Inam, Mr. Muhammad Atiq Qureshi and Mr. Muhammad Haleem Siddiqi, Advocates and so also Mr. Muhammad Sarwar Khan, learned Additional Advocate General argued against the vires of Industrial Relations Act, 2012. Written submissions were also filed by most of them which were also considered. The arguments advanced by them to establish that Industrial Relations Act, 2012 is *ultra vires* the Constitution and therefore liable to be struck down can be summarized as follows:-

a. Prior to the Eighteenth Amendment made to the Constitution, the matters relating to welfare of labour, conditions of labour, trade unions, industrial and labour disputes were enumerated in the

Concurrent Legislative List under Entries No. 26 & 27 and both the Parliament and provinces had jurisdiction to legislative on these subjects. The Eighteenth Amendment in the Constitution was adopted with the intention to grant maximum provincial autonomy to the provinces and as a result thereof the Concurrent Legislative List was abolished. Under Article 142(c) of the Constitution, the subjects that are not enumerated in the Federal Legislative List fall within the legislative competence of the Provincial Legislatures and the Provincial Legislatures only have exclusive power to make laws on all residuary subjects;

b. under Article 144 (1) of the Constitution, the Parliament can legislate on any matter not enumerated in Federal Legislative List only if one or more Provincial Assemblies pass a resolution to that effect. The correct course of action therefore should have been that the four Provincial Assemblies should first pass resolutions authorizing the Parliament to regulate by law the subjects that are covered by Industrial Relations Act, 2012. This enabling Constitutional provision provided under Article 144 (1) of the Constitution was not resorted to and the Parliament enacted the law in absence of the mandate granted to it by any Province;

c. the Hon'ble Supreme Court in the case of *Air League of PIAC versus Federation of Pakistan* reported in 2011 SCMR 1254 has held that the Federal Government has no power to legislate on the subject of labour welfare and trade unions, which subjects after the Eighteenth Amendment have devolved upon the Provinces. This judgment also discusses the mechanism as to how the Federal legislature under Article 144 of the Constitution can legislate on matters that are not covered by the Federal Legislative List, which judgment under Article 189 of the Constitution is binding on all Courts in Pakistan;

d. the Industrial Relations Act, 2012 cannot be validated on the ground that it is intended to discharge obligation under the International Treaties and Conventions such as the ILO

Conventions No.87 and 98 on the basis of Entry No.3 of the Federal Legislative List as the ILO Conventions do not contain any commitment of the nature on the basis of which Industrial Relations Act, 2012 was required to be enacted especially when the subjects covered by Industrial Relations Act, 2012 have already been dealt with by the Provincial legislatures; and,

e. NIRC established under Industrial Relations Act, 2012 is a parallel legal forum alongside the Labour Courts established under the Provincial law thereby creating multiple jurisdictions and thus leading to confusion.

4. In support of the above contentions Mr. Mehmood A. Ghani, relied upon the cases reported in SBLR 2012 89, 2013 SCMR 34, PLD 2012 SC 923, 2011 SCMR 1254, PLJ 2011 SC 771, 2012 PLC 145, PLJ 2004 SC 719, PLD 1965 SC 527, 1975 LLJ 399, PLD 2010 SC 483, PLD 1994 SC 363, AIR 1987 SC 579, PLD 2005 SC 1, PLD 1964 SC 673, PLD 1993 SC 341, PLD 1984 Lahore 69, PLD 1998 SC 1445, PLD 1996 SC 324, 1998 SCMR 1930, 1971 PLC 499, 1999 PLC 320, PLD 1993 SC 341, PLD 2010 Karachi 27, PLD 1996 Lahore 542, PLD 1994 SC 105, PLD 1996 SC 324, PLD 2011 SC 132, 2010 PLC (CS) 899, PLD 2010 SC 676, 1988 SCMR 68, 2010 PLC 323, NLR 2001 Labour 107, NLR 2004 Labour 33, 1998 PLC (CS) 1068, SBLR 2009 Quetta 98. Choudhry Muhammad Ashraf relied upon the case reported in 1973 PLC 376. Mr. Haleem Siddiqi, advocate relied upon the case reported in 2011 SCMR 1254. Mr. Muhammad Sarwar Khan, Additional A.G relied upon the cases reported in PLD 2012 LAHORE 103, 2010 PTD 1913 and 2013 PLC 143.

5. Mr. Makhdoom Ali Khan, Mr. Latif Sagar, Mr. Rasheed A. Razvi, Mr. Salahuddin Ahmed, Mr. Muhammad Azam Khan Azmati, Mr. Muhammad Rafiq Malik, Mr. Malik Naeem Iqbal, Mr. Shabbir Shah, Advocates and Mr. Muhammad Aslam Butt, leaned Deputy Attorney General argued in support of the impugned legislation. Written submissions were also filed by most of them which were also considered. The arguments advanced by them to establish that

Industrial Relations Act, 2012 is *intra vires* of the Constitution and therefore a valid and enforceable piece of legislation can be summarized as follows:-

a. The Industrial Relations Act, 2012 was within the legislative competence of the Parliament on the basis of Entries No. 14, 27 and 32 of Part I of the Fourth Schedule and Entry No.13 of the Part II of the Fourth Schedule of the Constitution. Where legislation can be protected by any Entry in the Federal Legislative List, Federal law cannot be struck down;

b. the Entry No.27 (inter provincial trade and commerce) entitles the Federation to come up with a legislation such as Industrial Relations Act, 2012, as it aims to regulate industrial disputes in relation to establishments operating in the Federal Capital territory or at inter-provincial level. Industrial Relations Act, 2012 does not deal with establishments that operate in one particular province only, as such establishments are regulated purely by the provincial law;

c. while determining the question whether any of the Entries of the Federal Legislative List is wide enough to encompass within its ambit Industrial Relations Act, 2012, maximum possible amplitude is to be given while construing the entries of the Constitution as the Courts always tend towards giving validity to a law and preserve competence of the legislature rather than striking it down by interpreting a provision of law strictly;

d. under Article 189 of the Constitution a decision of the Supreme Court is binding only to the extent it decides a question of law or is based upon or enunciate a principle of law whereas the *Air league* case in not conclusive on the issue involved in this case so as to prevent this Court from independently decide whether Industrial Relations Act, 2012 is *ultra vires* of the Constitution or not;

e. Industrial Relations Act, 2012 guarantees the workmen of inter-provincial establishment to organize themselves on inter-provincial level, form trade unions and seek appointment of Collective Bargaining Agent and also to have the industrial dispute resolution mechanism at inter-provincial level. A provincial law cannot secure such a right for trans-provincial establishments as a provincial law is not enforceable beyond the territorial limits of the province; and,

f. Industrial Relations Act, 2012 has been enacted to discharge the obligations created under the International Treaties and Conventions and therefore its legislation can be said to fall under Entry No.3 of Part 1 of the Federal Legislative List.

6. Mr. Makhdoom Ali Khan relied upon the cases reported in PLD 1956 Karachi 158, PLD 1969 SC 623, PLD 1997 SC 582, 1998 PTC 1084, 1999 SCMR 526, 2007 PTD 398, 2010 CLD 226, 2010 PLC 306, PLD 2012 SC 224, PLD 2012 SC 870, PLD 1997 SC 582, PLD 2010 SC 265, PLD 2005 SC 719, 1932 AC 304, PLD 2012 SC 923. Mr. Rasheed A. Razvi relied upon the cases reported in PLD 1988 SC 670, 2010, CLD 226, PLD 2005 SC 373, 1997 SCMR 641, 2002 SCMR 1694, AIR 1921 PC 148, AIR 1941 FC 47, AIR 1941 FC 16, AIR 1939 FC 1, AIR 1947 PC 60, PLD 1970 SC 253, PLD 1971 SC 401, AIR 1959 SC 544, SBLR 2011 Sindh 1433, PLD 1967 Karachi 418, PLD 1966 SC 854, PLD 1977 SC 197, PLD 1969 SC 623, PLD 1997 SC 781, AIR 1947 PC 60. Mr. Salahuddin Ahmed relied upon the cases reported in PLD 1997 SC 582, PLD 1971 SC 40, 252 US 416 (1920) and PLD 2012 SC 923, PLD 2012 SC 93. Mr. M.A.K. Azmati relied upon the cases reported in 2011 SCMR 1254, 2012 PLC 219, PLD 2010 Karachi 328, PLD 2012 SC 923, PLD 2010 SC 1665, PLD 2012 SC 923, 2012 PLC 1, PLD 1967 DACCA 179, 199 PLC (CS) 1023 SC, PLD 2006 SC 602, PLD 2013 SC 501, SBLR 2011 Sindh 1433, PLD 1988 SC 416 and 2005 SCMR 100, Mr. Latif Sagar relied upon the cases reported in SBLR 2011 (Sindh) 1433, 2013 PLC 143 and 2010 PLC 323.

7. We now proceed to examine the main question which needs to be answered first i.e. whether Industrial Relations Act, 2012 is *ultra vires* of the Constitution.

8. The object to legislate Industrial Relations Act, 2012 is stated in its preamble. It states *"An Act to consolidate and rationalize the law relating to formation of trade unions, and improvement of relations between employers and workmen in the Islamabad Capital Territory and in trans-provincial establishment and industry."* From the preamble it is evident that Industrial Relations Act, 2012 was enacted to deal with the subjects of formation of trade unions and settlement of industrial disputes relating to only such industrial and commercial establishments that operate either in the Islamabad Capital Territory or at trans-provincial level. The employers and the workmen of such establishments can now get their industrial disputes settled from the forum of NIRC that is established under Industrial Relations Act, 2012. Apart from the adjudication of the industrial disputes, the NIRC has also been empowered to register trade unions, industry-wise trade unions, federation of trade unions and determine the collective bargaining agent from amongst the trade unions and industry-wise trade unions of the trans-provincial establishments. Thus from the preamble of Industrial Relations Act, 2012 it is evident that it applies to a distinct category of establishments and not to the intra-provincial establishments that are regulated by the provincial law i.e. Sindh Industrial Relations Act, 2013. Keeping aside the establishments operating in the Islamabad Capital Territory, the question that arises is why the need arose to come up with a Federal law for a distinct category of establishments when the subjects of labour welfare and unions were not incorporated in the Federal Legislative List under the Eighteenth Constitutional Amendment? The way to find the answer to this question lies in the first recital of Industrial Relations Act, 2012 which states "*WHEREAS, the Constitution of the Islamic Republic of Pakistan recognizes the freedom of association as a fundamental right of the citizens:"* The contents of the first recital are nothing but recognition of the fundamental right of every citizen of this country to

form associations and unions as preserved under Article 17 of the Constitution. It reads as follows:-

> ***17. Freedom of association.—****(1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.*

9. A bare reading of Article 17 of the Constitution shows that it guarantees every citizen of Pakistan the right to form associations or unions. The like-minded workmen, working in an establishment operating at trans-provincial level may choose to espouse their cause through the platform of a trade union. Now can the Fundamental Right be curtailed in Commercial and Industrial establishments having branches in more than one province to an extent that such a right could not be exercised at trans-provincial level and is confined only within the territorial limits of a province? In other words, can the workmen be denied their right to form a nation-wise or inter-provincial trade union in an establishment that operates at national or trans-provincial level i.e. having branches in more than one province? In the case of *Pakistan Muslim League (N) v. Federation of Pakistan* reported in PLD 2007 SC 642 while discussing the primacy of the Fundamental Right over all legislation, it was held by the Hon'ble Supreme Court in paragraph 30 as follows:-

> 30. *".....Fundamental Rights guaranteed by the Constitution are not meant merely to be pious enunciations of certain principles supposed to be the basis of the Constitution. The characteristic of a Fundamental Right is its paramountcy to ordinary State-made laws. They are immune from the pale of legislative enactments and executive actions. They constitute express constitutional provisions limiting legislative power and controlling the temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation. The sanctity of the Fundamental Rights is protected by Article 8(2) which prohibits the State which includes the Legislature not to*

make any law by which any Fundamental Right may be curtailed or taken away and if any law is made to this effect then to the extent of such contravention it shall be void. It is not liable to be abridged by any legislative or executive orders except to the extent provided in Art. 233. Fundamental rights cannot be waived. No right which is based on public policy can be waived. Citizens of Pakistan cannot themselves waive out of the various fundamental rights which the Constitution grants them. The fundamental rights are not to be read as if they included the words 'subject to a contract to the contrary."

10. The Objective Resolution, which was incorporated in the preamble of our Constitution, has been made substantive part of the Constitution by virtue of Article 2-A of the Constitution. The sixth paragraph of the second recital of the Preamble of the Constitution borrowed from the Objective Resolution recognizes, *inter alia,* the right to form association. It reads as follows:-

WHEREIN shall be guaranteed FUNDAMENTALRIGHTS including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;

11. Both the Federal and Provincial legislatures, therefore, are bound to ensure that no law in any manner, not even by implication, curtail or restrict the exercise of any of the Fundamental Rights that are guaranteed under the Constitution. These rights are to be allowed to be exercised to the fullest extent, of course subject to the law that regulates its exercise.

12. The most imports aspect of this case which needs to be kept in mind is that after the Eighteenth Amendment that was made in the Constitution in the year 2010 and prior to the enactment of Industrial Relations Act, 2012, no law was made to allow the workmen to exercise their right to form trade union at a trans-provincial level nor the provincial legislature was competent enough to legislate law for allowing trade union activities at trans-provincial level on account of

the restriction contained on its legislative powers under Article 141 of the Constitution. Article 141 of the Constitution reads as follows:-

> ***141. Extent of Federal and Provincial laws.—****Subject to the Constitution, {Majlis-e-Shoora (Parliament)} may make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the province or any part thereof.*

13. From the provisions of Article 141 of the Constitution it is clearly evident that the Provincial Assemblies are not empowered to make laws having operation beyond its territories. Hence the provincial legislation in its application cannot travel beyond the territorial boundaries of the province. By not providing a law for trans-provincial establishments for exercise of the right to form associations and unions at trans-provincial level created a vacuum. Unless there is legislation at the Federal level, the right of the workmen to have trade union activities in trans-provincial establishment could not be materialized though the workmen working in a trans-provincial level establishment may intend to achieve their common objects through a common platform of one trade union. So it was also a jurisdictional deficiency of the Provincial Legislature to facilitate and regulate exercise of the Fundamental Right at trans-provincial level. Hence there was this urgent need to have a legal forum at the Federal level to facilitate and regulate the exercise of the Fundamental Right as guaranteed under Article 17 of the Constitution for the industrial and commercial establishments that operate in the Islamabad Capital Territory or at trans-provincial level. The only way to make available such right and regulate it was to come up with a Federal law. No doubt in a Federal system, provincial autonomy means capacity of a province to govern itself without interference from the Federal Government or the Federal legislature but as discussed earlier the Provincial legislature can legislate a law which has its application only within the territorial boundaries of the province. The right to form a trade union that can operate beyond the provincial boundaries cannot be secured and regulated by a provincial law. Where a law in its application is

required to travel beyond the territorial boundaries of a province then it goes beyond the legislative competence of the provincial legislature. Now, there cannot be any matter or activity of a trans-provincial nature which when cannot be regulated by a provincial law on account of the constitutional constraints, would be allowed to remain unregulated by any law. Whenever such a peculiar situation arises, the Federal legislature as of necessity, must step in order to protect, preserve and regulate the right which in the present case is also guaranteed under Chapter 1 of Part II of the Constitution. The Federal legislature is the only forum left to come up with a law to address the situation in hand. In the present case it can be seen that it is only Industrial Relations Act, 2012, a Federal law, which allows the workmen, working in a trans-provincial establishment having branches in more than one province operating under common ownership or common umbrella to form a single trade union of its like-minded members, get it registered and if need arises, get a collective bargaining agent declared. Of course the Federal legislation would be justified only if it does not blatantly encroach upon legislative authority of a Province on a particular subject but here it is impossible for the provincial legislature to regulate a right, exercise of which transcends provincial boundaries. This is the fundamental distinction which we have kept in our minds while examining Industrial Relations Act, 2012 on the touchstone of constitutional validity.

14. We are conscious of the fact that the Eighteenth Constitutional Amendment, no doubt, resulted in the abolition of the Concurrent Legislative List, but it may also be noticed that the proviso to Article 137 of the Constitution even in the post Eighteenth Amendment scenario leaves a room for a situation where the Parliament as well as provincial legislature may still have concurrent jurisdiction to make law on a subject if an occasion so arises. To come up with a Federal law to deal with a situation which cannot be addressed through the provincial legislation is one such occasion and therefore cannot be taken as usurpation of the provincial autonomy.

15. We may also mention here that when a provincial legislature is not competent to preserve and regulate the rights of the workmen of trans-provincial establishments to the fullest, no prejudice is caused to the provincial autonomy if the Federal legislature gives a law of its own for such establishments. Industrial Relations Act, 2012 in its applications does not destroys or usurps the provincial autonomy or the principle on which the federation was formed under the Constitution as it facilitates and regulates the right to form unions at trans-provincial level which right cannot be attained through a provincial law. Thus the right that has been guaranteed under Article 17 of the Constitution if not permitted to be exercised through Federal Legislation in establishments operating at trans-provincial level cannot be made available through a provincial legislation on account of the constitutional bar contained on provincial legislation under Article 141 of the Constitution. We deem it appropriate here to also refer to Article 8 (1) of the Constitution, wherein it is stated "*8. Laws inconsistent with or in derogation of Fundamental Rights to be void. -- (1) Any law, or any custom or usage having the force of laws, insofar as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.*" When a law that is inconsistent with any Fundamental Right guaranteed in the Constitution is to be declared *ultra vires* and is to be struck down on the touchstone of Article 8 of the Constitution, then how could the workmen be deprived from exercising the Fundamental Right of forming trade union in an establishment that operates at trans-provincial level, which right without any iota of doubt can only be facilitated and regulated through a Federal law. This is exactly what is aimed at by Industrial Relations Act, 2012. It aims at providing a common forum both to the workmen as well as the employers of trans-provincial establishments where they may seek enforcement of their respective rights, including the right of the workmen to form unions at trans-provincial level. The provincial boundaries no more come in the way of exercising this Fundamental Right. No law can be made to prevent formation of unions at trans-provincial level therefore no embargo can be put even by implication on the exercise of such a right. On the contrary the absence of any law to

facilitate functioning of trade unions at trans-provincial level would amounts to impliedly putting an embargo on the exercise of this right. We may also refer here the provisions of Article 4 (2) (b) of the Constitution which read *"No person shall be prevented from or be hindered in doing that which is not prohibited by law.* Absence of a law facilitating and regulating trade union activities at trans-provincial level by itself amount to preventing the exercise of this right that is created and preserved by Article 17 of the Constitution.

16. We shall next examine as to under which Entry of the Federal Legislative List the legislation of Industrial Relations Act, 2012 can be justified. Prior to the Eighteenth amendment there were two Legislative Lists i.e. Federal and Concurrent. In such a situation there was a genuine need to harmonize the two lists so that efficacy of the concurrent list is not lost, which rule of interpretation is no more attracted when there is only one Legislative List. It is also a rule of interpretation that where two views on the constitutionality of an enactment are possible, the one making the enactment constitutional is to be adopted. While interpreting the scope of any Legislative Entry it is well established principle that widest possible meaning is to be attributed to its provisions i.e. the rule of liberal construction is to be followed. This view of ours is fortified by a judgment from Indian jurisdiction delivered in the case of *The Elel Hotels and Investment Ltd. and another v. Union of India* reported in AIR 1990 SC 1664. In the said case the Supreme Court of India held as follows:-

> *"The cardinal rule of interpretation is that the entries in the legislative lists are not to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. The widest possible construction, according to the ordinary meaning of the words in the entry, must be put upon them. Reference to legislative practice may be admissible in reconciling two conflicting provisions of rival legislative lists. In construing the words in a Constitutional document conferring legislative power the most liberal construction should be put upon*

the words so that the same may have effect in their widest amplitude".

(Underlined by us to lay emphasis)

17. In the situation like the present one, Entry No. 58 of Part I of the Federal Legislative List, in our view, can be read with considerable advantage to justify legislation of Industrial Relations Act, 2012 even though the subjects of labour welfare and unions are not specifically enumerated in the Federal Legislative List. Entry No.58 of Part I of the Federal Legislative List of the Constitution reads as follows:-

> ***58.*** *Matters which under the Constitution are within the legislative competence of Majlis-e-Shoora (Parliament) or relate to the Federation.*

18. The contents of Entry 58 can be divided into two parts. In the first part it is stated "*Matters which under the Constitution are within the legislative competence of Majlis-e-Shoora (Parliament)"* and in the second part it is stated *"or relate to the Federation"*. The words of the second part of Entry 58 *"or relate to the Federation"* have their own independent significance. The import of the second part of Entry 58 is that apart from any matter that falls within the legislative competence of the Parliament, there can also be a matter which may relate to the Federation and therefore the Parliament may decide to legislate on such matter as well. *Thus the second part of Entry 58* empowers the Parliament to legislate on a matter, which though may not be specifically enumerated in any Entry of the Federal Legislative List but in some way, the matter may relate to the Federation. When legislation is required to legitimize and regulate the trade union activities in trans-provincial establishments, it can be said that such a matter relate to the Federation as obviously, as discussed above, the Provincial legislature can't legislate on a subject which in its application has to transcend the provincial boundaries in view of the bar contained in Article 141 of the Constitution. To deal with such a matter, the Federal legislature, on the strength of Entry No.58 of Part I

of the Federal Legislative List, as of necessity, can step in to legislate in order to preserve and regulate a right that not only in its exercise transcends provincial boundaries but is of a nature which is also guaranteed under Article 17 of the Constitution. If the Federal legislature does not step in then such a right cannot be exercised at national or trans-provincial level. Here is the occasion to take aid of the words *"relate to the Federation"* as contained in Entry No.58 of Part I of the Federal Legislative List which is to be read with the spirit of the proviso to Article 137 of the Constitution as this proviso even after the abolition of the Concurrent Legislative List under the Eighteenth Amendment envisages that there can be an area of activity where the Federal and Provincial legislatures may have concurrent jurisdiction.

19. What is best for the people is to be left to the legislature as it is the members of the legislature that are entrusted with the function to understand the needs of the people who have chosen them. Unless there is brazen violation of any Constitutional provision, a Statute cannot be declared unconstitutional. We may clarify here that resort to Entry No.58 of Part I of the Federal Legislative List is being had only to deal with an extra-ordinary situation i.e. when a matter is taken subject-wise, it falls within the legislative competence of the province but when it comes to its application its needs to travel beyond the territorial boundaries of the province. This makes it a Federal subject to deal with and the only possible mode that is left to deal with such a peculiar situation is to invoke the provisions of Entry No.58 otherwise the exercise of the right guaranteed under Article 17 of the Constitution would stand curtailed in the industrial and commercial establishments that operate at national or trans-provincial level.

20. It is the Industrial Relations Act, 2012 only which enables the exercise of the Fundamental Right with regard to formation of unions as guaranteed under Article 17 of the Constitution at trans-provincial level. In our view when a right to form a political party at national level is available and allowed to be exercised throughout the country, so does the right to form associations and unions at a level which

transcends territorial boundaries of the provinces. The Fundamental Rights guaranteed under the Constitution cannot be abridged except in the interest of sovereignty and integrity of the country, public order or morality or in a situation envisaged under Article 233 of the Constitution. If the Industrial Relations Act, 2012 is stuck down on the ground that it overlaps with the provincial law, the workmen of trans-provincial establishments cannot form unions and get them registered that can legitimately function at trans-provincial level. These rights would remain unenforceable and unregulated by any law. Here arises the occasion to invoke the doctrine of "pith and substance". The object of this doctrine is to enquire what is the pith and substance of the law, vires of which are being challenged. If the outcome of such enquiry is that it only enables exercise of a right which cannot be exercised to the fullest under a provincial law and the federal legislation can be justified on the basis of some Entry in the Federal Legislative List then the impugned law cannot be declared to be an invalid piece of legislation merely because in its appearance it has incidentally encroached upon a subject falling within the legislative competence of the provinces. In such eventuality the doctrine of pith and substance require us to give primacy to the object which the Federal law aims to achieve rather than to the subjects it deals with. Beyond any shadow of doubt the Industrial Relation Act, 2012 was enacted to facilitate and regulate the exercise of the Fundamental Right of forming unions as guaranteed under Article 17 of the Constitution in the establishments that operate at trans-provincial level which right cannot be made available and regulated through a provincial law. It is for this reason the scope of the impugned legislation is confined only to industrial and commercial establishments that operate either in the Islamabad Capital territory or at trans-provincial level.

21. As Industrial Relations Act, 2012 in substance, is intended to preserve the Fundamental Right guaranteed under Article 17 of the Constitution, it does not, in any manner, defeat the object with which the Eighteenth Amendment was incorporated in the Constitution as it does not destroy any existing substantive right or obligation. This is

evident from the provisions of Section 33 of Industrial Relations Act, 2012 which reads as follows:-

> ***33. Redress of individual grievances.—****(1) A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force to the notice of his employer in writing, either himself or through his shop steward or collective bargaining agent within ninety days of the day on which the cause of such grievance arises.*

22. The contents of Section 33 of Industrial Relations Act, 2012 clearly establish that it does not destroy any existing right. On the contrary by virtue of Section 33 all existing rights stand preserved therefore it cannot be said to be such law which affects any right or obligation created by any law including any provincial law.

23. We may in the passing also mention here that if we declare Industrial Relations Act, 2012 to be *ultra vires* of the Constitution, what immediately comes to our minds is that (a) the employer would not recognize the right of the workmen to form one trade union and carry out unified trade union activities in his establishment that operates at trans-provincial level. Secondly, the number of workmen working in each unit of trans-provincial level establishment would be counted separately which in turn would have adverse impact on the rights of the workmen, in so far as applicability of benefits and security of job granted under various labour laws are concerned as certain rights granted under various labour laws become available to the workmen depending upon the total strength of the workmen in an establishment.

24. As to the effect of the judgment of Hon'ble Supreme Court delivered in the case of *Air League of PIAC Employees versus Federation of Pakistan* reported in 2011 SCMR 1254, in our view it does not

prevent this Court from deciding the constitutionality of Industrial Relations Act, 2012. Paragraph 27 of *Air League case* reads as follows:-

> *"Now turning towards the submission of the learned Amicus curiae on the vires of Provincial Labour Laws on the ground that there are many Institutions /Corporations which have their branches all over the country and there were countrywide Trade Unions but now Trade Union can only be registered under the legislation of a specific province. It is to be noted that instant proceedings have been initiated under Article 184(3) of the Constitution with a limited purpose of having a declaration that INDUSTRIAL RELATIONS ACT, 2008 on the basis of Eighteenth Constitutional Amendment stood protected and continued till 30th June, 2011, therefore, the vires of the same cannot be considered in such proceedings. However, as stated earlier Article 144(1) of the Constitution has provided mechanism for making central legislation in respect of matters not covered in the Federal Legislative List.*

25. AIR League's case only decided the question whether to declare that the Industrial Relations Act, 2008 stood protected under the Eighteenth Constitutional Amendment. So the above decision of the Hon'ble Supreme does not bind this Court in terms of Article 189 of the Constitution to independently decide the vires of another law i.e. the Industrial Relations Act, 2012 on the touchstone of the Eighteenth Constitutional Amendment. The Air league's case can be distinguished on this score alone. Furthermore, vide order dated 13.9.2012 passed by the Hon'ble Supreme Court itself in the case of *"Muhammad Akhlaq Khan & Ors Vs. Federation of Pakistan & others"* while referring to the pendency of the present proceedings in this Court, the Hon'ble Supreme Court held as follows:-

> *"2. In the afore-referred circumstances, they further concur that it would be in accord with judicial propriety to let the learned High Court of Sindh decide such issues in the first instance and thereafter the parties will have a right to challenge the order*

passed therein. The stand taken by the learned counsel for the parties is reasonable. In this view of the matter, this petition is disposed of with the observation that the learned High Court shall proceed with the afore-referred petitions and decide the same expeditiously preferably within a period of 30 days form the next date fixed before it'

26. No doubt in *Air League's* case it has been discussed that Article 144(1) of the Constitution has provided mechanism for the parliament to legislate in respect of matters not covered in the Federal Legislative List, but as explained below Article 144 (1) has no application to the instant cases. Article 144 (1) reads as follows:

144. ***Power of Majlis-e-Shoora (Parliament) to legislate for one or more Provinces by consent.*** *(1) If [one] or more Provincial Assemblies pass resolutions to the effect that [Majlis-e-Shoora (Parliament) may by law regulate any matter not enumerated in [the Federal Legislative List) in the Fourth Schedule, it shall be lawful for [Majlis-e-Shoora (Parliament) to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Province to which it applies, be amended or repealed by Act of the Assembly of that Province.*

27. From a bare reading of the provisions of Article 144 (1) of the Constitution it is evident that it is attracted only when at the instance of the Provincial Assembly or Assemblies Federal legislation is required on any matter which is not covered by any Entry of the Federal Legislative List. In the present case however, we have taken the view that the provisions of Entry 58 of Part I of the Federal Legislative List can be called in aid to establish legislative competence of the Parliament to enact Industrial Relations Act, 2012. The provisions of Article 144(1) of the Constitution, therefore, have no application to the present cases.

28. In view of the above discussion the first question framed by this Court i.e. "w*hether the Industrial Relations Act, 2012 is ultra vires of the constitution?"* is answered in the negative.

29. This brings us to answer the second question framed by this Court i.e. *What legal remedies are available to the employees/ labourers/ workers who are employed in a company/ corporations/ institutions established in two different Provinces?* Declaring Industrial Relations Act, 2012 to be intra vires of the Constitution may be taken to mean that there now exist two laws side by side, one at Federal level i.e. Industrial Relations Act, 2012 and the other at provincial level i.e. Sindh Industrial Relations, 2013 both dealing with similar subjects. The employers or the workmen of trans-provincial establishments may get confused as they may think that there are now two forums concurrently available to them dealing with the same subjects. In order to avoid this confusion of overlapping of jurisdictions as to where the employers or workmen of trans-provincial establishments could seek legal remedy, Section 87 has been incorporated in Industrial Relations Act, 2012 which provides that its provisions shall have overriding effect, notwithstanding anything contained to the contrary in any other law for the time being in force. The effect of this *non-obstante* clause contained in Section 87 of Industrial Relations Act, 2012 is only to the extent that for trans-provincial establishments, the forum to seek legal remedy in matters covered by Industrial Relations Act, 2012 is only and only the one provided thereunder i.e. NIRC and not the Labour Courts established under the Sindh Industrial Relations Act, 2013. For establishments that are operating at provincial level only it is the provincial law i.e. the Sindh Industrial Relations Act, 2013 that is applicable. All cases pending adjudication in Labour Court pertaining to trans-provincial industrial and commercial establishments shall stand transferred to the NIRC of appropriate jurisdiction. Likewise, cases, if any, pending adjudication in NIRC pertaining to intra-provincial industrial and commercial establishments shall stand transferred to the Labour Courts of appropriate jurisdiction. The second question is answered accordingly.

30. In view of our above findings, we declare that the Industrial Relations Act, 2012 is a valid piece of legislation. Its enactment was within the legislative competence of the Parliament, therefore the only forum to seek remedy with regard to any industrial dispute arising in a "trans-provincial" industrial and commercial establishment having branches in more than one province is the one that is provided in the Industrial Relations Act, 2012. All Constitution Petitions accordingly stand disposed of.

Acting Chief Justice

Judge

Dated:___.08.2014 Judge