ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2539 of 2020
Rana Muhammad Shafqat
Versus
Director General of Trade Organization and others

S. No. of order / proceedings	Date of order / Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	31.03.2021	**Malik Ghulam Sabir, Advocate for the petitioner** **Mr. Ali Nawaz Kharal and Rana Rashid Javed, Advocates for respondent No.3** **Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General** **Mr. Moeen Ahmad, Deputy Director, D.G.T.O.**

Through the instant writ petition, the petitioner, Rana Muhammad Shafqat, impugns the order dated 10.09.2020 passed by the Director General of Trade Organizations **("D.G.T.O.")** whereby the appeal filed by the petitioner against the order dated 04.09.2020 passed by the three-member Election Commission was dismissed primarily on the ground that he had not raised an objection to the inclusion of name of respondent No.3 (Irfan Shaukat) in the provisional voters list in accordance with Rule 18(4) of the Trade Organizations Rules, 2013 **("the 2013 Rules")**.

2. On 27.08.2020, respondent No.3, as a nominee of National Links (Mobilink), submitted his nomination papers for election as Member Executive Committee of the Bahawalpur Chamber of Commerce and Industry **("B.C.C.I.")**. On 02.09.2020, the petitioner filed objections to respondent No.3's nomination papers before the Election Commission. Vide order dated 04.09.2020, the said objections were rejected. The appeal preferred by the petitioner against the said order dated 04.09.2020 was dismissed by the D.G.T.O. vide order dated 10.09.2020. The said concurrent orders have been assailed in the instant writ petition.

3. The provisional voters list of associate class for the year 2020-21 issued by the B.C.C.I. mentions the

name of National Links (Mobilink) at serial No.125 with respondent No.3 as its representative and having National Tax Number ("N.T.N.") No.1379427-8. In the final voters list issued by the B.C.C.I., the name of National Links (Mobilink) appears at serial No.126. The online verification of respondent No.3's status obtained by the petitioner from the Federal Board of Revenue's website on 28.08.2020 and 02.09.2020 shows his status as inactive. The income tax returns for the tax year 01.07.2018 to 30.06.2019 were filed by respondent No.3 on 02.09.2020. This shows that on 27.08.2020 (i.e. the date of filing of the nomination papers) respondent No.3 had not filed income tax returns for the preceding year.

4. Rule 11(4) of the 2013 Rules provides that the membership of a trade organization shall be granted for a period of one year and shall expire on the 31st day of March each year irrespective of the date of the grant of membership. By operation of the said provision, the membership of National Links (Mobilink) expired on 31.03.2020.

5. Rule 11(5)(b) of the 2013 Rules provides that membership shall be renewable on annual basis subject to the provision of proof of filing return of income tax and sales tax, if applicable for the preceding year. The online search carried out by the petitioner shows that respondent No.3 had not filed its income tax returns for the year 2018-19 prior to the filing of its nomination papers.

6. Rule 15 of the 2013 Rules provides *inter alia* that the eligibility of a member of a trade organization to vote at the elections of the trade organization shall be subject to the condition that the member has fulfilled the conditions of membership and renewal thereof of the respective trade organization under Rule 11 *ibid*.

The petitioner's case is that respondent No.3 is not eligible to vote since by the date of the filing of the nomination papers, he had not fulfilled the requirement under Rule 11(5)(b) of the 2013 Rules.

7. Rule 18(4) of the 2013 Rules provides that the members who have any objection to the entries in the list of voters shall send their objections in writing to the Secretary General within seven days of the issuance of the voters' list. Admittedly, the petitioner did not object to the inclusion of National Links (Mobilink)'s name in the provisional or the final voters list. This is the sole ground on which the petitioner's objection to respondent No.3's candidature was concurrently rejected by the Election Commission and the D.G.T.O. In rejecting the petitioner's objection, the Election Commission and the D.G.T.O. did not give any consideration to Rule 18(12) of the 2013 Rules which provides that the objections to the nomination of the candidates may be filed to the Election Commission within 24 hours of the issuance of the list of candidates, which shall be decided by the Election Commission within two days. The Election Commission and the D.G.T.O. have attributed redundancy to Rule 18(12) of the 2013 Rules by non-suiting the petitioner on the sole ground that he had not objected to the inclusion of National Links (Mobilink)'s name in the voters list in accordance with Rule 18(4) of the 2013 Rules.

8. Indeed the petitioner had not filed objections to the entries in the voters list under Rule 18(4) of the 2013 Rules. It is also an admitted position that the petitioner had filed its income tax returns for the preceding year on 02.09.2020, which is after the date of the filing of the nomination papers. It ought to be borne in mind that the provisions of the Trade

Organizations Act, 2013 and/or the 2013 Rules do not make the filing of objections under Rule 18(12) of the said Rules to the nomination of candidates before the Election Commission conditional or subject to the filing of objections to entries in the voters list under Section 18(4) of the 2013 Rules. It was obligatory on the D.G.T.O. to have decided whether the non-filing of the income tax returns by respondent No.3 prior to the date of the filing of the nomination papers had rendered him ineligible to participate in the elections. In the impugned order dated 10.09.2020, no such determination has been made by the D.G.T.O. Therefore, the instant petition is allowed; the impugned order dated 10.09.2020 is set-aside; and the matter is remanded to the D.G.T.O. to decide the petitioner's objections to the eligibility of respondent No.3 to participate in the elections as Member Executive Committee of the B.C.C.I. It is expected that such decision would be made by the D.G.T.O. within a period of one month from the date of the receipt of this order after affording an opportunity of hearing to the contesting parties. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*