JUDGEMENT SHEET

IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 626/2022

Pakistan Steel Mills Corporation Limited through its Authorized Officer
Vs.
National Industrial Relations Commission, Islamabad & others

PETITIONER BY:	Mr. Shahid Anwar Bajwa and Mr. Abdul Rahman Bajwa, Advocates, alongwith Mr. Asghar Shaheen, Incharge Law, and Mr. Zardeel Abbasi, Manager (I.R), Pakistan Steel Mills Corporation Limited.
RESPONDENTS BY:	Mr. Usman Ghani Swati, Advocate for respondent No.4. Ch. Muhammad Ashraf Khan, Advocate for respondent No.10.
DATE OF DECISION:	29.04.2025.

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BABAR SATTAR, J.- The petitioner is aggrieved by order dated 07.02.2022, pursuant to which the Authorized Officer on behalf of the National Industrial Relations Commission (NIRC) has held that the list of workers submitted by the petitioner within the meaning of Section 19(4) of the Industrial Relations Act, 2012 **("Industrial Relations Act")** shall be deemed to be the list of voters in the referendum for purposes of determining the Collective Bargaining Agent (CBA), referendum for which was to be held on 04.03.2022.

2. The learned counsel for the petitioner submitted that the impugned order is in breach of provisions of Section 19 of the Industrial Relations Act as under Section 19(3) of the Industrial Relations Act, the Registrar requires unions to submit a list of their members, and sub-Section (4) of Section 19 of the Industrial Relations Act the Registrar directs the employer to

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submit a list of workmen employed by such employer. And it is after verification of the list under sub-Section (5) of Section 19 of the Industrial Relations Act that the voters' list is issued. He submitted that in the instant case, the Registrar afforded multiple opportunities to the unions to provide a list of their members, but they failed to do so and consequently the Registrar has decided that the list submitted by the employer is to be deemed to be the voters list in the breach of Section 19(5) of the Industrial Relations Act, given that the list of workmen is to be verified in order to ensure that each workman is also member of a union in order to be eligible to participate in the referendum, which exercise has not been carried out. He submitted that without such verification the list of employees submitted by the employer cannot be notified as the voters list for purposes of referendum. He further submitted that respondents No.3 to 10 are registered unions, but the governing bodies of such unions are in breach of provisions of Section 8(1)(j) of the Industrial Relations Act as the statute has prescribed that the maximum term for the managing body for a trade union shall not exceed two years. But the office holders of the aforementioned unions have exceeded their term of two years and are consequently no longer legally entitled to represent such unions. And unless such unions convene their elections in accordance with provisions of the Industrial Relations Act, they are not entitled to participate in a referendum and seek to be notified as CBA. He relied, *inter alia*, on ***K.E.S.C Progressive Workers' Union through its Chairman and others vs. K.E.S.C Labour Union through its General***

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Secretary and others ***(1991 SCMR 888)*** wherein it was held that the list to be finalized under Section 22 of the Industrial Relations Ordinance is not a list of total workmen but is a list of voters that must be in compliance with the requirements of Section 22(9) of the Industrial Relations Ordinance, which requires that the period of employment of the voter must not be less than three months, the voter must be a member of a contesting trade union, and the aforesaid requirements must be satisfied on the cut-off date four days prior to the date fixed for the polls. He further submitted that in terms of the requirements for registration and maintenance of registers of trade unions, as prescribed under regulations 8, 10, 11 and 16 of the NIRC (Procedure & Functions) Regulations, 2016, trade unions are under an obligation to maintain a list of their members and the contesting trade union was thus required to submit a list of members pursuant to Section 19 of the Industrial Relations Act, without which a list of voters for purposes of determining the CBA could not be determined.

3. Not all the respondent unions appeared before the Court and those who failed to appear despite issuance of proclamation and notices were proceeded against *ex-parte*. Respondents No.3, 4 and 10 filed comments and contested the petition.

4. In the interest of economy the arguments of the learned counsels for the respondents are being summarized together. It was contended that the petitioner never raised any objection to the manner in which the voters list was finalized by

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the authorized officer appointed by NIRC and consequently, the petitioner ought to be stopped from raising any objections before this Court for the first time that had not been raised before the NIRC or its authorized representative. It was submitted that the petition was *malafide* as the object was to prevent the election and appointment of a CBA on one pretext or another. The authorized representative of NIRC had determined that the list of employees submitted by the petitioner, as employer, would be treated as the voters list. As the petitioner had itself submitted such list and certified that those on the list are employees of the petitioner, it could have no objection to such employees being on the list of voters to vote for a CBA. It was submitted that the question of whether or not submission of a list by the trade union was mandatory for purposes of an election for CBA under Section 22 of the Industrial Relations Ordinance, 1969 **("Industrial Relations Ordinance")**, which was pari materia to Section 19 of the Industrial Relations Act, was decided by the Sindh High Court in ***Muhammad Farooque Textile Mills Workers' Union (Regd.) vs. The Registrar of Trade Unions, Sind (East Division) and 2 others*** **(*1987 PLC 723*)** by holding that a registered trade union could not be excluded from contesting a referendum on the ground of non-submission of list of its members to the Registrar. The same question came before the Lahore High Court in ***PECO Head Office Staff Union vs. The Registrar of Trade Unions, Lahore Region, Lahore and another*** ***(PLD 1979 Lahore 820)*** in which it was also held that the failure of a trade union to supply a list of its members entailed no penal consequences and that it was for the Registrar

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to put together a list of voters under Section 22 of the Industrial Relations Ordinance and non-submission of such list was not a ground for depriving workers from exercising their franchise. It was further submitted that the petitioner was claiming that the voters, as recognized through the list submitted by the petitioner in terms of Section 19(4) of the Industrial Relations Act, did not qualify the conditions prescribed under Section 9(5) of the Industrial Relations Act. However, the determination of whether the conditions prescribed in Section 9(5) of the Industrial Relations Act were satisfied (i.e. the employees that served for more than three months and were members of the contesting trade union, required a determination of fact which could not be rendered by the Court in its constitutional jurisdiction). For this proposition reliance was placed on ***Sohaib Shaukat vs. Labour Department (2010 PLC 265)***.

5. After hearing the arguments of parties, the Court needed further assistance and the matter was re-listed for hearing on 30.10.2024. The matter, however, needed to be adjourned as the learned counsel for respondent No.3 had passed away and the Court issued notices to provide an opportunity to respondent No.3 to appoint a fresh counsel to assist the Court. Nobody, however, appeared before the Court on behalf of the respondents. Today (i.e. 29.04.2025) the learned counsel for the petitioner submitted that much water had flown under the bridge since the filing of the petition. Included amongst the subsequent developments is that the Sindh Labour Court No. V through judgment dated 22.02.2025 had granted permission to the petitioner to terminate more than

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50% of the workmen of the petitioner. Subsequent to such decision a majority of the workmen had been terminated and the petitioner was left with approximately three hundred workmen on its payroll. While the workmen, who were in the employment of the petitioner, had a right to form trade unions and select a CBA in terms of provisions of the Industrial Relations Act, it would be in the fitness of things if the matters were remanded back to NIRC to verify the workmen, who were in the employment of the petitioner and the union(s) they associated with, in order to affirm the list of voters for purposes of elections for CBA.

6. The controversy before the Court is limited to the legality of the list of voters approved by the NIRC pursuant to the impugned decisions dated 07.02.2022 and 31.03.2022, whereby the list of workmen submitted by the petitioner in terms of Section 19(4) of the Industrial Relations Act was declared to be the list of voters for purposes of Section 19(5) of the Industrial Relations Act. It is the petitioner's contention that under Section 19 of the Industrial Relations Act a voter, whose name is included in the list of voters for purposes of the election of the CBA, must satisfy three requirements: (1) He/she must be employed in the establishment as a worker; (2) He/she must be employed for a period of three months at least four days prior to the date fixed for the poll; and (3) He/she must be a member of a union contesting to be elected and recognized as the CBA. The respondents have not contested the basic argument of the petitioner but only state that there is nothing on record to establish that the list of workmen provided by the petitioner

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included workmen who do not qualify in terms of the aforementioned conditions. Consequently, there is no basis to declare that such list is not a valid list for purposes of Section 19(5) of the Industrial Relations Act.

7. The perusal of the impugned order reflects that it relies almost exclusively on the law laid down by the Sindh High Court in ***Muhammad Farooque Textile Mills Workers' Union***, the ratio of which was that delay in submission or non-submission of voters list could not be a basis for disenfranchising a trade union from contesting an election for appointment as CBA in terms of Section 22 of the Industrial Relations Ordinance. There are two things to note here. One, in terms of the facts of the said case, the case before the Sindh High Court was that of the trade union that was the incumbent CBA, which had sought an adjournment and additional time to submit the list of its members but had not been granted such time and had been excluded from contest for election as CBA. And two, the scheme of the Industrial Relations Ordinance, to the extent of recognition of the CBA, is significantly different from the scheme of the Industrial Relations Act. The question before this Court simply is whether in the absence of any list of members submitted by contesting trade unions in terms of Section 19(3) of the Industrial Relations Act, a list submitted by the employer of all workmen employed with such employer in terms of Section 19(4) of the Industrial Relations Act can be treated as a competent list of voters for purposes of election and recognition of the CBA.

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8. Let us review the relevant statutory provisions. CBA is defined in Section 2(iv) of the Industrial Relations Act as, *"in relation to an establishment, group of establishments or industry, means the trade union of the workmen which under Section 19, is the agent of workmen in the establishment or, as the case may be, industry, in the manner of collective bargaining."* This definition makes it evident that it is the trade union of workmen that is the CBA and consequently the contestant or participant in the election for a CBA in terms of Section 19 of the Industrial Relations Act. Section 8 of the Industrial Relations Act prescribes the requirements for registration of a trade union and Section 8(2)(a) of the Industrial Relations Act provides that all members of the trade union must be engaged or employed in the establishment with which the trade union is connected. Section 11 of the Industrial Relations Act prescribes the basis on which the registration of a trade union can be cancelled and Section 11(1)(b) of the Industrial Relations Act provides that, *"the registration of a trade union may be cancelled by the Registrar if the trade union has… obtained less than ten percent of total votes polled in an election for determination of a CBA, or is not a contestant in such election."* Section 11(1)(e) of the Industrial Relations Act further provides that failure to submit its annual returns as required under provisions of the Industrial Relations Act or rules framed there under is another basis for cancellation of registration of a trade union. Section 19 of the Industrial Relations Act deals with CBAs. Section 19(1) of the Industrial Relations Act provides that where an establishment only has one trade union and the

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members of such trade union are no less than one third of the total number of workmen employed in the establishment, such trade union, on its application, is to be certified as the CBA. Section 19(2) of the Industrial Relations Act provides that where an establishment has more than one trade union, upon application of any of them the Registrar shall hold a secret ballot to determine which of them shall be the CBA.

9. Sections 19(3), 19(4), 19(5) and 19(6) of the Industrial Relations Act are germane to the controversy at hand and are being reproduced below:

> *Section 19(3):- Upon receipt of an application under sub-section (2), the Registrar shall, by notice in writing call upon every registered trade union in the establishment or group of establishments to which the application relates:*
>
> *(a) to indicate whether it desires to be a contestant in the secret ballot to be held for determining the collective bargaining agent in relation to such establishment or group; and*
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> *(b) if it so desires, to submit to him within the time specified in the notice a list of its members showing, in respect of each member, his parentage, age, the section or department and the place in which he is employed, his ticket number and the date of his becoming a member and if union is a federation of trade unions, a list of its affiliated trade unions together with a list of members of each such trade union showing in respect of each such member the said particulars.*
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> *Section 19(4):- Every employer shall-*
>
> *(a) on being so required by the Registrar, submit a list of all workmen employed in the establishment excluding those whose period of employment in the establishment*

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is less than three months and showing, in respect of each workman, his parentage, age, the Section or department and the place in which he is employed, his ticket number and the date of his employment in the establishment; and

(b) provide such facilities for verification of the lists submitted by him and the trade unions as the Registrar may require:

Provided that, in computing the period of three months referred to in clause (a) in the case of a workman employed in a seasonal factory within the meaning of section 4 of the Factories Act, 1934 (XXV of 1934), the period during which he was employed in that factory during the preceding season shall also be taken into account.

Section 19(5):- The Registrar shall, after verification of the lists submitted by the trade unions, prepare a list of voters in which shall be included the name of every workman whose period of employment as computed in accordance with subsection (4), is not less than three months and who is a member of any of the contesting trade unions and shall, at least four days prior to the date fixed for the poll, send to each of the contesting trade unions a certified copy of the list of voters so prepared.

Section 19(6):- Every workman who is a member of any of the contesting trade unions and whose name appears in the list of voters prepared under subsection (5) shall be entitled to vote at the poll to determine the collective bargaining agent.

10. The scheme that emerges in view of the aforementioned provisions of the Industrial Relations Act is that the contest for election as CBA is between trade unions and in order to participate in such contest a trade union must throw its hat in the ring in terms of Section 19(3)(a) of the Industrial Relations Act (reproduced above). A trade union that desires to be a contestant is required to submit a list of its members

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together with the details of each member with regard to date of his employment as well as the date of his becoming a member of the trade union in terms of Section 19(3)(b) of the Industrial Relations Act (reproduced above). Section 19(4) of the Industrial Relations Act creates an obligation for the employer to submit a list of all workmen employed in the establishment, excluding those who have been employed for a period of less than three months. The obligation of the Registrar to prepare a list of voters is encapsulated in Section 19(5) of the Industrial Relations Act. Each voter whose name is included in the list is then entitled to vote through secret ballot to elect a CBA.

11. The scheme, as prescribed in Section 19 of the Industrial Relations Act, is that a contesting trade union, while contesting to be the CBA and represent all workmen employed in the establishment, must provide a list of its members who have been employed for a period of over three months, together with the date on which each member became a member of the trade union. Once all contesting trade unions have submitted the list of their members, it is for the Registrar to then verify the credentials while comparing the lists submitted by the trade unions under Section 19(3) of the Industrial Relations Act with the list submitted by the employer under Section 19(4) of the Industrial Relations Act. It is after comparison of such lists that the Registrar would then be able to definitively conclude that the list of voters for purposes of Section 19(5) of the Industrial Relations Act includes only such workmen who are (1) employed with the establishment and feature in the list submitted by the employer in terms of Section 19(4) of the Industrial Relations

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Act, (2) have been employed for a period of more than three months as submitted by the trade unions according to their own lists and confirmed by virtue of the list submitted by the employer, and (3) are members of a trade union, and are neither members of multiple unions nor are included among workmen who are not members of any trade union.

12. To appreciate the scheme, as described above, it must be reemphasized that as it is a trade union that is the contestant for the role of CBA. It is not all workmen who are voters and have a say in such election, but only such workmen who are the members of a contesting trade union. In other words, a workman who is either the member of a trade union that is not contesting for the position of CBA or a workman who is not the member of any trade union would not feature on the list of voters put together under Section 19(5) of the Industrial Relations Act for purposes of electing the CBA. The other point to note is that the list of workmen to be submitted by the employer is essentially a means to confirm and verify the credentials of members of contesting trade unions submitted by them under Section 19(3) of the Industrial Relations Act. The submission of list of members is crucial as Section 11(1)(e) of the Industrial Relations Act states that the failure to file an annual return could result in cancellation of registration of the trade union. Section 15 of the Industrial Relations Act mandates that every trade union must maintain a register of members showing particulars of subscriptions paid by each of them. Section 16(2) of the Industrial Relations Act requires that the return to be filed by a

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trade union with the Registrar on an annual basis must include a statement of the total paid membership of such trade union.

13. Regulation 11 of the NIRC (Procedure & Functions) Regulations, 2016, enacted in exercise of authority under Section 66 of the Industrial Relations Act, prescribes how registers are to be maintained and prescribes Form-E, which provides for the details of the list of members to be maintained. In other words, each trade union at all times must maintain a list of its members alongwith the credentials of such members and is under an obligation to file such list with the Registrar as a mandatory requirement for retaining its registration as a trade union. The other basis for cancellation of registration, highlighted above, is a trade union that either does not contest the election of the CBA or obtains less than ten percent of the total votes polled in an election for the CBA in terms of Section 11(1)(b) of the Industrial Relations Act. This cancellation requirement is a penalty attracted in case of a trade union that does not contest an election for the CBA or is unable to secure a minimum threshold of votes polled. This penal provision reinforces the requirement that all trade unions are expected to contest the election of CBA and are expected to secure a minimum threshold of votes from members of contesting trade unions, failing which, the trade union would lose its entitlement to remain a registered trade union. The scheme, as highlighted above, is different from the scheme that was prescribed under Section 22 of the Industrial Relations Ordinance. Under Section 22(2) and 22(3) of the Industrial Relations Ordinance the Registrar was required to determine through a secret ballot the representation of each

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trade union on the basis of the highest number of votes obtained. The scheme of Section 22 of the Industrial Relations Ordinance did not clearly delineate that it is only members of contesting trade unions that are voters for purposes of election of the CBA. Likewise, the penal requirements of not contesting election of CBA, as included in Section 11 of the Industrial Relations Act, were also not provided under the Industrial Relations Ordinance. For these reasons, the law laid down by the Sindh High Court and the Lahore High Court while interpreting requirements of Section 22 of the Industrial Relations Ordinance is distinguishable and not squarely applicable to interpretation of Section 19 of the Industrial Relations Act.

14. In terms of requirements of Section 19 of the Industrial Relations Act read together with the relevant provisions of Sections 9, 11, 15 and 16 of the Industrial Relations Act and provisions of the NIRC (Procedure & Functions) Regulations, 2016, it is obligatory for a trade union seeking to contest the election for a CBA to submit a list of its members, as required under Section 19(3) of the Industrial Relations Act, and such lists submitted by all contesting trade unions when put together would form the basis for the Registrar to compile a list of voters for purposes of Section 19(5) of the Industrial Relations Act, with the list of workmen submitted by the employer in terms of Section 19(4) of the Industrial Relations Act being a basis for carrying out relevant scrutiny of credentials of the workmen to be undertaken by the Registrar to confirm that the list of voters includes only such workmen that are eligible to be voters in a

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contest for the election of a CBA in terms of the criteria prescribed in Section 19(5) of the Industrial Relations Act.

15. For the aforementioned reasons, this Court finds that the manner in which the list submitted by the petitioner in terms of Section 19(4) of the Industrial Relations Act was declared to be the voters list for purposes of Section 19(5) of the Industrial Relations Act through the impugned order was not in accordance with law. The impugned orders dated 07.02.2022 and 31.03.2022 are therefore **set-aside**.

16. The learned counsel for the petitioner shared with the Court a copy of the judgment of the Sindh Labour Court No. V dated 22.02.2025, pursuant to which the petitioner has been allowed to retrench more than fifty percent of its employees on the basis that Pakistan Steel Mills has not been in production since 2015 and while it has continued to pay salaries to its employees and workmen, it has accumulated losses in excess of Rs.2.2 billion. The learned counsel for the petitioner informed the Court, as has already been noted above, that there are approximately three hundred workmen who remain on the payroll of the petitioner. In view of these circumstances, as well due to efflux of time and changed circumstances in which a majority of the workmen have been retrenched, the exercise of determining the identity of existing trade unions and the CBA will need to be initiated afresh.

17. The Registrar and/or the authorized representative of NIRC will issue a notice to the registered trade unions interested in contesting the election for CBA, who will then submit the list

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of their members in accordance with the requirements of Section 19(3) of the Industrial Relations Act and the petitioner will submit a list of its workmen in accordance with Section 19(4) of the Industrial Relations Act within the timelines prescribed under the said provisions. And the list for purposes of Section 19(5) of the Industrial Relations Act will be prepared accordingly. An election will then be convened within the stipulated time, as calculated in accordance with requirements of Section 19 of the Industrial Relations Act.

18. The petition is **allowed** in the above terms with no order as to costs.

(BABAR SATTAR)
JUDGE

Approved for reporting.

A. Rahman Abbasi.

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