JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.445 of 2024
Pakistan Poultry Association
Versus
Regulator of Trade Organizations and another

Date of Hearing:	02.04.2024
Petitioner by:	Mr. Tariq Bilal, Advocate along with Muzamil Aftab, Secretary General, PPA.
Respondent by:	Ms. Asia Batool, learned Assistant Attorney-General. Mr. Misbah-ul-Mustafa Safir, Advocate for respondent No.2. M/s Malik Ghulam Sabir and Ali Nawaz Kharral, Advocates, learned *amici curiae.*

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, Pakistan Poultry Association (**"PPA"**), impugns the order dated 24.01.2024 passed by the Directorate General of Trade Organizations (**"DGTO"**) whereby the complaint dated 06.10.2023 filed by respondent No.2, Khalid Saleem Malik, against the Chairman, PPA was decided with directions to PPA to call an Annual General Meeting (**"AGM"**) of PPA by following the procedure prescribed by law after intimation to all members of PPA and the office of the DGTO. Furthermore, a penalty of Rs.1,00,000/- was imposed on the Chairman and the Secretary General of PPA for holding an adjourned AGM in a manner not envisaged by PPA's Articles of Association (**"AoA"**) .

2. The record shows that on 30.08.2023, a notice was issued by the Secretary General of PPA through which PPA's members were informed that the 44th AGM of PPA would be held on 26.09.2023 at the Tulip Banquet Hall, Islamabad, and that they could participate in the meeting either physically or online. On the said date, the AGM was not held at the Tulip Banquet Hall, Islamabad but at the Central Office of PPA. PPA, in its comments submitted to the DGTO, admitted that the venue of the 44th AGM was changed since just 100 members had confirmed that they would attend the AGM physically. Nevertheless, as per the contents of respondent No.2's complaint dated 06.10.2023, dozens of members attended the meeting physically and some joined

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online. One of the members, namely Raza Mehmood Khursand, who had attended the meeting raised the issue regarding lack of the prescribed quorum. Furthermore, respondent No.2, vide email dated 26.09.2023 addressed to PPA, also raised objections with respect to certain irregularities in the AGM. One of the objections raised by him was that the prescribed quorum of 1/3rd members was not present at the AGM. Since respondent No.2's grievances were not adequately addressed by PPA he, on 06.10.2023, submitted a complaint to the DGTO to which PPA submitted a reply. The proceedings before the DGTO culminated in the order dated 24.01.2024 which has been impugned in the instant writ petition.

3. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the notice dated 30.08.2023 for holding the 44th AGM had been issued strictly in accordance with the law; that it is not disputed that in the meeting held on 26.09.2023, the required quorum of 1/3rd members was not present; that when the matter regarding lack of quorum was pointed out, the AGM was adjourned to be held on the same day; that the adjourned AGM held on 26.09.2023 did not suffer from any procedural irregularity so as to warrant interference in the Constitutional jurisdiction of this Court; that neither do the provisions of the Trade Organizations Act, 2013 (**"the 2013 Act"**) nor the Trade Organizations Rules, 2013 (**"the 2013 Rules"**) prescribe any procedure for holding an adjourned AGM; that the DGTO could not have allowed respondent No.2's complaint by invoking the provisions of the Companies Act, 2017 (**"the Companies Act"**) which provide for the mechanism for holding an adjourned AGM; that the jurisdiction of the DGTO was confined to enforcing the provisions of the 2013 Act and the 2013 Rules; that Rule 18(19) of the 2013 Rules requires the final result of the election of members of the Executive Committee and office bearers of a trade organization to be officially announced at an AGM; that there was no reason to hold an AGM as there were no results of any election to be announced; and that the impugned order dated 24.01.2024 passed by the DGTO is not sustainable in law. Learned

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counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. On the other hand, learned counsel for respondent No.2 submitted that the number of members at the AGM was less than 1/3rd of the General Body of PPA; that the number of members who attended the AGM fell short of the requirement under Article 42(v) of the AoA; that the petitioner's case is that after the lack of quorum was pointed out, the adjourned AGM was held on the same day; that the said meeting held on 26.09.2023 was of no legal consequence since the proviso to Section 135(1) of the Companies Act required an adjourned AGM to be held on *"the same day in the next week at the same time and place;"* and that since the adjourned AGM had not been held in accordance with the proviso to Section 135(1) of the Companies Act, the DGTO did not commit any jurisdictional irregularity by directing PPA to call an AGM by following the procedure prescribed by law. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed.

5. Messrs. Malik Ghulam Sabir, Advocate and Ali Nawaz Kharal, Advocate appeared as *amici curiae* and came up with well-prepared briefs on the subject. It is not necessary to detail their submissions as reference to the same will be made in the operative part of this judgment.

6. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraph 2 above and need not be recapitulated.

7. The vital question that needs to be answered is whether the DGTO, while deciding respondent No.2's complaint, could have relied on the provisions of the Companies Act in requiring PPA to call an AGM. Unlike the provisions of the Trade Organizations Ordinance, 1961, which has been repealed and replaced by the 2013 Act, the latter requires every licenced trade organization to be incorporated as a company. PPA has admittedly been issued a certificate of

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incorporation by the Registrar of Joint Stock Companies and has its Memorandum and AoA.

8. Section 2(l) of the 2013 Act defines "Ordinance" to mean the Companies Ordinance, 1984. This Ordinance now stands repealed and replaced by the Companies Act. Since the Companies Ordinance, 1984 was repealed by the Companies Act after the enactment of the 2013 Act, the term "Ordinance" wherever used in the 2013 Act is to read as the Companies Act.

9. Section 2(o) of the 2013 Act defines a "registered trade organization" to mean a trade organization registered under the Companies Act, whereas Section 3(8) requires a trade organization holding a licence to be registered under the provisions of the Companies Act as a company with limited liability. Rule 6(1)(e) of the 2013 Rules makes a licence granted to a trade organization subject to the condition that such trade organization applies, within thirty days of the grant of the licence, for incorporation as a company under the Companies Act and to secure incorporation within ninety days of the date of the licence.

10. Section 3(1) of the 2013 Act prohibits a trade organization from being registered as a company under the provisions of the Companies Act unless it holds a licence granted by the Federal Government authorizing it to be so registered. Therefore, an application for the grant of a licence under Rule 4 of the 2013 Rules is to be submitted to the Federal Government prior to the incorporation of the trade organization as a company under the provisions of the Companies Act.

11. A trade organization renders its licence liable to cancellation where it fails to get registration as a company under the provisions of the Companies Act,[1] or where it does not discharge statutory obligations as a limited company under the said Act.[2] A licence granted to any trade organization is subject to the condition that the trade organization complies with the provisions of *inter alia* the Companies Act.[3] Section 8 of the 2013 Act, which contains a non-

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[1] **Section 7(1)(c) of the 2013 Act**
[2] **Section 7(1)(g) of the 2013 Act**
[3] **Rule 6(1)(h) of the 2013 Rules**

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obstante clause giving an overriding effect to the provisions of the said Act over the Companies Act, provides for the cancellation of a trade organization's registration (i.e., its incorporation as a company) where the licence granted to it is cancelled by the Federal Government or where it fails to apply for the grant of a fresh licence within the time notified by the Federal Government.

12. Section 2(j) defines "memorandum" to mean the memorandum and the article of association of a trade organization. For the sake of uniformity in the structure and autonomy of trade organizations, the Federal Government has proposed a basic template of the Memorandum and AoA for all trade organizations. It is on the basis of this template that the Memorandum and AoA of PPA were made.

13. Article 42(v) of PPA's AoA provides for 1/3rd of the members of the general body to form the quorum for the annual general meeting. The position taken by PPA in the proceedings before the DGTO was that only 66 members out of 531 registered members of PPA attended the 44th AGM scheduled for 26.09.2023. The number of members who attended the adjourned AGM is not known. Be that as it may, for the purposes of the instant case, the proviso to Section 135(1) of the Companies Act provides that if at an AGM the required quorum is not present, the meeting shall be dissolved if it is called on the requisition of members; and in any other case, it shall be adjourned to the same day in the next week at the same time and place. The adjourned AGM conducted by PPA on the very same day on which it was adjourned is a stark violation of the proviso to Section 135(1) of the Companies Act.

14. I do not find merit in the contention of the learned counsel for the petitioner that the DGTO had no jurisdiction to take cognizance of respondent No.2's complaint regarding non-compliance by PPA with the requirements of proviso to Section 135(1) of the Companies Act. The provisions of the 2013 Act give far reaching powers to the DGTO to oversee the activities and functions of a trade organization to ensure that they remain compliant with provisions of the 2013 Act and the 2013 Rules as well as the terms and conditions of their licences. Section 14(1) of the 2013 Act provides *inter alia* that the affairs of a

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registered trade organization shall be managed and conducted in such manner as the Regulator may, from time to time, direct. Furthermore, Section 14(3)(a) empowers the Regulator to conduct inquiries into the affairs of a trade organization as may be necessary for the purposes of the 2013 Act. The powers given to the Regulator under Section 14(3)(b) are far reaching and include the power to inspect, with or without prior notice, any office of a trade organization or any record or document found therein. Section 14(3)(c) empowers the Regulator to attend any meeting of the General Body or the Executive Committee of a trade organization and/or also of any committee or other body set up to transact any business or conduct any affair of a trade organization. Section 14(3)(g) of the 2013 Act empowers the Regulator to give directions to trade organizations in matters concerning the 2013 Act or any rules or directives made thereunder.

15. Rule 6(1)(h) of the 2013 Rules makes compliance with the provisions of *inter alia* the Companies Act a condition of the licence. Furthermore, clause 14(1) of the licence issued to PPA also requires it to remain compliant with the requirements of the Companies Act. Therefore, breach of any of the provisions of the Companies Act would be tantamount to a breach of the provisions of the 2013 Rules and the terms of PPA's licence empowering the DGTO to give directions to a trade organization in terms of Section 14(3)(g) of the 2013 Act to show compliance with the requirements of the Companies Act. This is exactly what the DGTO did by requiring PPA, through the impugned order dated 24.01.2024, to call an AGM by following the procedure prescribed by law, which in this case would be the proviso to Section 132 of the Companies Act. Persistence on the part of PPA not to hold an AGM in accordance with Section 132 of the Companies Act would result in the initiation of the process for the cancellation of its licence under Section 7(1)(g) of the 2013 Act which provides that the licence granted to a trade organization shall be cancelled by the Federal Government where the trade organization is not discharging statutory obligations as a limited company under the Companies Act.

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16. As the provisions of the 2013 Act make it necessary for a registered trade organization to conduct its affairs in accordance with and remain compliant with the requirements of the Companies Act, the DGTO did not commit any illegality by requiring PPA to call an AGM in accordance with the law. Since the AGM originally scheduled for 26.09.2023 was adjourned due to lack of the required quorum, the law (i.e. the proviso to Section 135(1) of the Companies Act) required the adjourned AGM to be held on *"the same day in the next week at the same time and place,"* and since the adjourned AGM was not held a week later but on the same date of 26.09.2023, the petitioner had clearly conducted itself in violation of the law. Although Section 32 of the 2013 Act gives the provisions of the said Act an overriding effect on anything to the contrary contained in any other law for the time being in force, there is nothing in the 2013 Act which is contrary to the requirements under the proviso to Section 135(1) of the Companies Act.

17. For the reasons recorded above, I see no force in the instant petition which is dismissed. No costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 19/04/2024.

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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