# JUDGMENT SHEET
# IN THE ISLAMABAD HIGH COURT, ISLAMABAD
# JUDICIAL DEPARTMENT

**W.P.No.2495/2018**
**Pakistan Services Limited**
**Versus**
**Registrar Trade Unions and others**

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| **Dates of Hearing:** | 15.06.2021 & 16.06.2021 |
| **Petitioner by:** | M/s S. Naeem Bokhari, Kashif Nawaz Siddiqui and M. Imad Khan, Advocates |
| **Respondents by:** | Mr. Khalid Ismail Advocate for respondents No.2 and 3 |

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Pakistan Services Limited, impugns the order dated 30.04.2018 passed by respondent No.1/Registrar Trade Unions **("R.T.U.")** dismissing the petitioner's application for the cancellation of registration No.26/15, dated 17.12.2015 of the Pearl Continental Hotels National Labour Union (respondent No.2) issued by the R.T.U.

2. The facts essential for the disposal of this petition are that on 02.03.2015, respondent No.2 applied to the R.T.U. for its registration as an industry-wise trade union. In the said application, it was mentioned that respondent No.2 has 23 members. Vide letters dated 14.04.2015 and 04.05.2015, the Registrar of the National Industrial Relations Commission**("N.I.R.C.")** called upon the management of the Pearl Continental Hotels, Lahore and Karachi to submit the list of workmen employed in the establishment of Pearl Continental Hotels. This list was required in order to verify the claim made by respondent No.2 in its application for registration as an industry-wise trade union. Along with its letter dated 23.05.2015, the Pearl Continental Hotel Karachi sent the list of workmen employed in the said hotel to the Deputy Registrar, N.I.R.C. In the said letter, the position taken was that all the Pearl Continental Hotels in Pakistan are independent. A request for a hearing was also made. On 27.02.2015, respondent No.2 submitted a declaration certifying that all the officers and members of respondent

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**No.2/union are employed in the establishment where the union has been organized. In the said declaration, the words *"not less than 1/5th of the total strength of the said establishment"* has been scored off. The Pearl Continental Hotels Karachi and Lahore contested respondent No.2's said application by filing objections before the R.T.U. The objections *inter alia* were that Pearl Continental Hotels all over the country are independent and have nothing to do with each other; that there are different trade unions in different Pearl Continental Hotels; and that fake and bogus proceedings were carried out for formation of respondent No.2/ union.**

**3. Vide order dated 17.12.2015, the R.T.U. rejected the objections filed by the management of the Pearl Continental Hotels Karachi and Lahore and issued registration certificate No.26/2015 to respondent No.2/union. In the said order dated 17.12.2015, the R.T.U. recorded the statement on behalf of the Pearl Continental Hotel, Rawalpindi's management to the effect that Pearl Continental Hotels throughout the country are being run and controlled by the petitioner/Pakistan Services Ltd. which is a trans-provincial establishment and as such N.I.R.C. has got the jurisdiction in the matter. The Pearl Continental Hotel Lahore assailed the order dated 17.12.2015 before this Court through writ petition No.1027 of 2016, which was filed on 10.03.2016. However, on the application of the Pearl Continental Hotel, Lahore, the said writ petition was dismissed as withdrawn vide order dated 27.02.2018.**

**4. On 19.12.2016, the R.T.U. also issued a registration certificate to Pearl Continental Hotels Staff Union (respondent No.3).**

**5. On 16.10.2017, respondent No.3 filed a petition under Section 62 of the Industrial Relations Act, 2012 ("I.R.A.") seeking certification of two Collective Bargaining Units ("C.B.U.s") for (i) Pearl Continental Hotels in Lahore, Bhurban, Rawalpindi and Peshawar, and (ii) Pearl Continental Hotels in Karachi and Gwadar. Along with the said petition, respondent No.3 also filed an application for stay against the process for the determination**

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**of Collective Bargaining Agents ("C.B.A.s") in the Pearl Continental Hotels until the determination of C.B.U.s in the said establishments. Vide order dated 19.12.2017, the learned Member, N.I.R.C. dismissed the said application for stay filed by respondent No.3.**

**6. Against the said order dated 19.12.2017, the petitioner as well as respondent No.3 filed separate appeals, which were dismissed vide order dated 10.05.2018 passed by learned Full Bench, N.I.R.C. at Karachi. The petitioner challenged the order passed by learned Full Bench, N.I.R.C. through constitution petition No.4674/2018 filed before the Hon'ble High Court of Sindh at Karachi. The said constitution petition was dismissed vide judgment dated 27.04.2021. The learned Division Bench of the Hon'ble High Court of Sindh in its judgment *inter alia* observed that the *lis* between the parties is pending before the N.I.R.C. Before the learned Member and Full Bench, N.I.R.C. as well as the Hon'ble High Court of Sindh, the petitioner raised the ground that the R.T.U. did not have the jurisdiction for registration of an industry-wise trade union.**

**7. On 17.01.2018, the petitioner had filed a petition under Section 11(1)(a)&(c) of the I.R.A. before the R.T.U. for cancellation of respondents No.2 and 3's registration as industry-wise trade unions *inter alia* on the ground that the registration of an industry-wise trade union is the function of the N.I.R.C. and not the R.T.U. Furthermore, the position taken in the said petition was that Pearl Continental Hotels in different cities are not trans-provincial establishments as they do not constitute establishments or groups of establishments for purposes of registration of an industry-wise trade union. The said application was dismissed by the R.T.U. vide order dated 30.04.2018. The said order has been impugned by the petitioner in the instant petition.**

**8. The very next day after filing an application before the R.T.U. for the cancellation of respondents No. 2 and 3's registration as industry-wise trade unions, the petitioner, on 18.01.2017, filed another application before the N.I.R.C. under Sections 9, 11, 57 and 60 of the I.R.A. In the said application, the petitioner**

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challenged the process of referendum for the determination of C.B.A. as well as the proceedings for the determination of C.B.U.s. The said application is based on the premise that the R.T.U. is not vested with the jurisdiction to register an industry-wise trade union and that registration of respondents No.2 and 3 was done by the R.T.U. in violation of law. The said application was dismissed by the learned Member, N.I.R.C. vide order dated 25.04.2018. The said order was assailed in an appeal by the petitioner before the learned Full Bench, N.I.R.C. Since at that time, the learned Full Bench, N.I.R.C. was not functional, the petitioner assailed the said order in writ petition No.2138/2018 before this Court and was able to obtain an injunctive order. Vide order dated 05.06.2018, the said petition was disposed of. This Court had directed for status *quo* to be maintained until the petitioner's appeal along with the stay application was taken up for hearing before the learned Full Bench, N.I.R.C. Thereafter, the petitioner's appeal was admitted to regular hearing vide order dated 08.06.2018 passed by the learned Full Bench, N.I.R.C. The said order sets out the points of law involved in the case and *inter alia* records that "*the crucial point in the petition before the learned Single Member was whether the Registrar of Trade Union appointed by the Federal Government has the jurisdiction under Section 5 to register industry-wise trade union or federation of industry-wise trade unions...*" The documents brought on record by respondents No.2 and 3 show that vide order dated 07.09.2018, the said appeal before the learned Full Bench, N.I.R.C. was adjourned *sine die* till adjudication of the Constitution petition before the Hon'ble High Court of Sindh (which, as mentioned above, was dismissed vide order dated 27.04.2021) and the instant petition. The said appeal is still *sub judice* before the learned Full Bench, N.I.R.C. Presently, the learned Full Bench, N.I.R.C. is not functional and that is why the petitioner's said appeal is still pending adjudication.

9. Learned counsel for the petitioner, after narrating the facts leading to filing of the instant petition, submitted that the terms *"trade union"* and *"industry-wise trade union"* have been

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**separately defined in the I.R.A.; that under Section 54 of the I.R.A. only the N.I.R.C. is vested with the jurisdiction to register an industry-wise trade union; that under the scheme of the I.R.A., an R.T.U. is not a part of the N.I.R.C.; that the registration of respondents No.2 and 3 as industry-wise trade unions by the R.T.U. was without jurisdiction; that the said proceedings before the R.T.U. were a nullity in the eyes of law; that the Pearl Continental Hotels in Lahore, Karachi, Bhurban, Rawalpindi and Peshawar are all separate entities having no presence in the Islamabad Capital Territory; that only 23 and 30 members from the Pearl Continental Hotels at Karachi and Lahore, respectively were shown to be members of respondents No.2 and 3at the time of their registration; that at the time of respondents No.2 and 3's registration as an industry-wise trade union, a total number of 416 workmen were employed at the Pearl Continental Hotels at different cities; and that none of the employees of the petitioner at Islamabad were members of respondents No.2 and 3.**

**10. Learned counsel further submitted that each Pearl Continental Hotel has separate C.B.A.s with whom the respective administration has entered into several settlements which are in the field; that under Regulation 10 of National Industrial Relations Commission (Procedure and Functions) Regulations, 2016, the application for registration of industry-wise trade union used to be filed before the R.T.U. but this Court had, vide judgment dated 21.01.2020 passed in W.P. No. 2188/2019 titled "Chevron Pakistan Lubricants (Private) Limited Vs Federation of Pakistan, etc," held that power to grant registration to an industry-wise trade union exclusively vests in the N.I.R.C.; that after this Court had issued the said judgment, the N.I.R.C. issued notification dated 27.01.2021 whereby Regulation 10A was inserted in the 2016 Regulations; that under Regulation 10A of the 2016 Regulations, the registration of industry-wise trade unions and federations of industry-wise trade unions is to be done by the N.I.R.C.; that the R.T.U. has failed in forming the opinion under Section 11(2) of the I.R.A. in accordance with law; and that under Section 12 of the I.R.A., the petitioner cannot file an appeal against the impugned**

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**order. Learned counsel for the petitioner prayed for the petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the judgments reported as *2015 PLC (C.S.) 117, PLD 2013 SC 255, PLD 2010 Lahore 443, 2006 SCMR 1713, 2006 PLC 186, PLD 2005 SC 270, 2004 SCMR 400, 2004 PLC 354, 1999 SCMR 138, 1982 PLC 843* and *PLD 1978 Karachi 567*.**

**11. On the other hand, learned counsel for respondents No.2 and 3 contested the petition on the ground that the petitioner, being an employer, had no *locus standi* to interfere in the matter of registration of a trade union; that the petitioner has challenged the registration of respondents No.2 and 3 after more than three years; that the petitioner has instituted multiple proceedings for the same purpose; that this Court's judgment in Chevron's case has a prospective effect; and that in the case reported as *2006 PLC 288*, the Hon'ble High Court of Sindh has already declared the petitioner as trans-provincial establishment. Learned counsel for respondents No.2 and 3 prayed for the petition to be dismissed. In making his submissions, learned counsel for respondents No.2 and 3 placed reliance on the judgments reported as *1999 SCMR 234* and *1998 PLC 500*.**

**12. I have heard the contentions of the learned counsel for the 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 paragraphs 2 to 8 above and need not be recapitulated.**

**13. The vital question that needs to be determined is whether after the interpretation of Sections 11 and 54 of the I.R.A. by this Court vide judgment dated 21.01.2020 passed in W.P.No. 2188/2019 titled "Chevron Pakistan Lubricants (Private) Limited Vs. Federation of Pakistan, etc," the registration of industry-wise trade unions by the R.T.U. are liable to be declared as unlawful. For the purposes of clarity, the operative part of the judgment in the Chevron's case is reproduced herein below:-**

> ***"7. A plain reading of the above noted provisions shows that the legislature has unambiguously intended to treat a "trade union" and "industry-wise trade union" as distinct entities. They***

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*have been defined separately and the definition of a "trade union" does not include "industry-wise trade union". The power of the Registrar in the context of granting registration to an entity under the Act of 2012 has been explicitly restricted to a "trade union". The Commission however has concurrent jurisdiction. The powers of the Registrar described under the Act of 2012, by no stretch of the imagination can be extended to registration of "industry-wise trade union", which has been treated as a distinct entity. The power to grant registration to the latter category of union has been expressly provided under clause (b) of section 54 and it exclusively vests in the Commission. The learned counsel for the respondents has argued that since the provisions of the Act of 2012 do not contemplate cancellation of a registered "industry-wise trade union", therefore, as a corollary the power shall deem to vest in the Registrar under section 11 of the Act of 2012. This argument if accepted, would amount to reading in the statute something that the legislature has not provided therein. The power of cancellation provided under section 11 of the Act of 2012 is unambiguously confined to a "trade union", which definitely does not include "industry-wise trade union". Seeking guidance from the provisions of the General Clauses Act, 1897, it would be apt to observe that the power to issue an order or notification conferred under a statute includes the power to add to, amend, vary or rescind such instrument. The power to cancel registration of an "industry-wise trade union" thus vests in the Commission and not the Registrar. The power and jurisdiction to consider an application seeking registration of an "industry-wise trade union" thus exclusively vests in the Commission under the Act of 2012 and not the Registrar.*

*8. For the above reasons, the Registrar was not vested with jurisdiction under the Act of 2012 to consider, process or grant registration under the category of "industry-wise trade union" and consequently this petition is allowed and the impugned order, dated 01-04-2019, is hereby set aside. The application filed by the respondents for seeking registration in the category of "industry-wise trade union" shall be treated as pending before the learned Commission. The learned Commission after affording an opportunity of hearing to the parties is expected to decide and dispose-of the application pursuant to powers conferred under section 54(b) of the Act of 2012."*

**14. It is not disputed that the orders for the registration of respondents No.2 and 3 as industry-wise trade unions were passed by the R.T.U. and not by the N.I.R.C. The R.T.U. entertained respondents No.2 and 3's applications for registration as industry-wise trade unions on the basis of Regulation 10 of the National Industrial Relations Commission (Procedure and Functions) Regulations, 2016 ("the 2016 Regulations"). The said Regulation is reproduced herein below:-**

*"Procedure for Registration: -- For the registration of an industry-wise trade union, an officers association, a federation of such trade unions and a federation at the national level, the Registrar of Trade Unions, shall, subject to the provisions of this Chapter,*

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***follow the procedure as laid down in the Act for the registration of a trade union or, as the case may be, a federation of the trade unions;***

***Provided that, if an application for registration is made by a trade union, or an industry-wise trade union or a federation at the national level which has previously been registered by the Registrar of Provincial Labour department, the applicant shall submit with the application, a copy of the certificate of registration issued to it."***

**15. The said Regulation clearly empowered the R.T.U. to entertain and decide applications for the registration of *inter alia* industry-wise trade unions. Therefore, the registration of respondents No.2 and 3 by the R.T.U. (prior to the judgment in Chevron's case) cannot be held to be without jurisdiction. After the judgment of this Court in Chevron's case, the N.I.R.C. issued notification dated 27.01.2021 whereby Regulation 10A was inserted in the 2016 Regulations, which reads thus:-**

***"10A. The Benches of the Commission shall, in relation to industry-wise trade unions, federations of such trade unions, and cases referred to the Commission, perform such functions and exercise such powers as are performed and exercised by a Registrar Trade Unions in relation to Trade Unions, and, for this purpose, any reference in the Industrial Relations Act, 2012 or in these Regulations to a "Registrar Trade Union" shall be deemed to be a reference to the appropriate Bench of the Commission to which such functions are assigned."***

**16. After the insertion of Regulation 10A, applications for the registration of industry-wise trade unions are to be entertained by the N.I.R.C. and not by the R.T.U. Additionally, the Chevron's judgment also clarifies that applications for the cancellation of industry-wise trade unions are also to be decided by the N.I.R.C. and not by the R.T.U.**

**17. If the law laid down in Chevron's case is to be given retrospective effect it would put at naught all registrations of industry-wise trade unions made by the R.T.U. prior to the said judgment. This eventuality cannot be countenanced. The judgment in Chevron's case is to be given prospective effect. In the case of Pir Bakhsh Vs. Chairman, Allotment Committee (PLD 1987 SC 145), the Hon'ble Supreme Court held *inter alia* that *"the fact that the law laid down by this Court is prospective also cannot be doubted."* Furthermore, in the case of Muhammad Yousuf Vs.**

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**Chief Settlement and Rehabilitation Commissioner (PLD 1968 S.C. 101), it has been held as follows:-**

> ***"This judgment was delivered on the 2nd November 1964, and its consequence was that as from that date all Courts subordinate to the Supreme Court and all executive and quasi-judicial authorities were obliged by virtue of the Constitution to apply the rule as laid down by the Supreme Court in cases coming up before them for decision. It did not have, and it cannot be contended that it had, the effect of altering the law as from the commencement of the Act so as to render void of its own force all relevant orders of the Settlement authorities or of the High Court made in the light of the earlier interpretation which was that the exercise of the delegated power was subject to the provisions in Chapter VI of the Act."***

**18. Additionally, in the case of Sardar Ali Vs. Muhammad Ali (PLD 1988 SC 287), it was held as follows:-**

> ***"The law is well settled that where the rights of the parties have been judicially determined with reference to the terms of a law in force at the time of the adjudication, the finality of such a judgment will not be affected merely because the law on the basis of which that decision was rendered has subsequently been altered unless a provision is expressly made in the changed or modified law destroying the finality of the aforesaid judgment."***

**19. Now, the grounds on which the petitioner sought the cancellation of respondents No.2 and 3's registration as industry-wise trade unions in its application before the R.T.U. are the same as the ones taken by the petitioner in its application filed under Sections 9, 11, 57 and 60 of the I.R.A. before the N.I.R.C. This application was dismissed vide order dated 25.04.2018 and an appeal against the said order is pending before the learned Full Bench, N.I.R.C. It may be noted that in the said application, the petitioner had specifically invoked Section 11 of the I.R.A. and had pleaded that the registration of respondents No.2 and 3's trade unions was unlawful.**

**20. Since in the judgment in Chevron's case, it has been held in no uncertain terms that the power to cancel registration of an industry-wise trade union vests in the N.I.R.C. and not in the R.T.U., the petitioner is at liberty to pursue its appeal before the learned Full Bench, N.I.R.C. against the order dated 25.04.2018 passed by the learned Member, N.I.R.C. dismissing the petitioner's application *inter alia* under Section 11 of the I.R.A. Since the impugned order dated 30.04.2018 was passed by the**

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**R.T.U prior to the judgment in Chevron's case, I am not inclined to set it aside but observe that it shall not operate to the petitioner's prejudice in the proceedings in the petitioner's pending appeal before the learned Full Bench, N.I.R.C. This petition stands disposed of in the above terms.**

**(MIANGUL HASSAN AURANGZEB)**
**JUDGE**

**ANNOUNCED IN AN OPEN COURT ON 06/07/2021**

**(JUDGE)**

***Qamar Khan****

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