JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4108 of 2019
Zubair Farid Tufail
Versus
Director General of Trade Organization and others

Date of Hearing:	03.12.2019
Petitioner by:	Malik Ghulam Sabir, Advocate.
Respondents by:	Mr. Ali Nawaz Kharal, Advocate for respondents No.5 and 6. Mr. Faisal Akhtar, Director, F.P.C.C.I. Mr. Moin Ahmad, Deputy Director, D.G.T.O.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Zubair Farid Tufail, impugns the appellate order dated 25.11.2019, whereby respondent No.1 (Regulator of Trade Organizations) allowed the appeal filed by respondent No.5 (Anjum Nisar) against the order dated 08.11.2019 passed by respondent No.3 (Election Commission of the Federation of Pakistan Chambers of Commerce and Industry). Vide the said order dated 08.11.2019, respondent No.3 dismissed respondent No.5's objections to the petitioner's inclusion in the voters list for the 2020 elections of respondent No.2 (Federation of Pakistan Chambers of Commerce and Industry) (**"F.P.C.C.I."**) as a nominee of respondent No.6 (Pakistan Chemical Manufacturers Association). Vide the appellate order dated 25.11.2019, respondent No.1 allowed respondent No.5's appeal against the said order dated 08.11.2019 and directed the Secretary General of respondent No.6 to convene an emergent meeting of the members of the Executive Committee (**"E.C."**) to nominate a person for the election of the E.C. of the F.P.C.C.I. As a result of the appellate order dated 25.11.2019, respondent No.5 could not be treated as respondent No.6's nominee to cast vote in the 2020 F.P.C.C.I. elections.

2. The facts essential for the disposal of the instant petition are that on 03.10.2019, respondent No.3 issued the election schedule

under Rule 14(a) of the Trade Organizations Rules, 2013 (**"the 2013 Rules"**). On 04.10.2019, respondent No.3 issued notices to the trade organizations, including respondent No.6, requiring them to send their nominations for the membership of the E.C. and the General Body of the F.P.C.C.I. for the year 2020. On 16.10.2019, a meeting of respondent No.6's E.C. was convened to nominate representatives for the membership of the E.C. and the General Body of the F.P.C.C.I. The petitioner as well as respondent No.5 wanted to be nominated as the representatives of respondent No.6 for the said purpose.

3. The balloting by the members of the E.C. of respondent No.6 resulted in five votes being cast in favour of the petitioner whereas four votes were cast in respondent No.5's favour. The Secretary General of respondent No.6 had permitted the members of respondent No.6's E.C. to cast their votes through e.mails. Nabila Intisar, who was a member of respondent No.6's E.C., raised objections to votes being accepted through e.mail. On 16.10.2019, respondent No.6 withheld the petitioner's nomination for the membership of the E.C. of F.P.C.C.I., whereas Imran Ghafoor's nomination for the membership of the General Body was sent to the F.P.C.C.I. On 17.10.2019, Nabila Intisar submitted an application to the Chairman of respondent No.6 objecting to the inclusion of the votes sent by e.mails. On 18.10.2019, the Secretary General of F.P.C.C.I. informed respondent No.6 that the latter had not sent its nomination for the membership of the E.C. of the F.P.C.C.I. Vide letter dated 16.10.2019, the Secretary General of respondent No.6 sent the petitioner's name as its nominee for the membership of the E.C. of the F.P.C.C.I.

4. In the writ petition, it has been pleaded that respondent No.6's Secretary General had sought a clarification from respondent No.1 on the question whether votes through e.mails could be accepted. It was also pleaded that on 23.11.2019 respondent No.1 clarified that postal and proxy votes could not be counted by respondent No.6 for nominating a representative for the membership of the E.C. of the F.P.C.C.I.

5. The Secretary General of respondent No.6, vide letter dated 24.10.2019, sought guidance from respondent No.1 on whether during the *"consultations"* for the nomination of respondent No.6's representative for the E.C. and General Body of F.P.C.C.I., votes through e.mail could be accepted. There is nothing on the record to show if any response to the said letter was sent by respondent No.1.

6. Vide letter dated 26.10.2019, the Secretary General of respondent No.6 requested the F.P.C.C.I. to cancel the petitioner's nomination and his inclusion in the provisional voters' list as the representative of respondent No.6 for the membership of the E.C. of the F.P.C.C.I. Vide letter dated 31.10.2019, the Secretary General of the F.P.C.C.I. turned down the said request. The said letter was challenged in an appeal by respondent No.5 before respondent No.3. The said appeal was dismissed vide order dated 16.11.2019 passed by respondent No.3. Against the said order dated 16.11.2019, respondent No.5 preferred an appeal before respondent No.1. Vide impugned order dated 25.11.2019, the said appeal was allowed and respondent No.6 was directed to convene an emergent meeting of its E.C. and forward a nomination for the membership of the E.C. of the F.P.C.C.I. The said order dated 25.11.2019 has been assailed by the petitioner in the instant writ petition.

7. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the order dated 25.11.2019 passed by respondent No.1 and the order dated 08.11.2019 passed by respondent No.3 are at variance; that valuable rights had accrued in the petitioner's favour after he was elected by the E.C. of respondent No.6 to be nominated as respondent No.6's representative for membership of the E.C. of the F.P.C.C.I. for the year 2020; that on 16.10.2019, the Secretary General of respondent No.6 had sent the petitioner's name to the F.P.C.C.I. as respondent No.6's nominee for the membership of the E.C. of the F.P.C.C.I.; that the petitioner's name was sent after he had got the majority votes of the members of respondent No.6's E.C. for the said purpose; that respondent No.6 was a

company incorporated under the provisions of the Companies Ordinance, 1984; that there was nothing preventing the members of respondent No.6's E.C. to cast their votes through e.mail; that the objections to the petitioner's nomination were raised by a person who had voted for the petitioner's opponent; that the F.P.C.C.I. did not commit any illegality by turning down the request made by respondent No.6's Secretary General to cancel the petitioner's nomination for the membership of the E.C. of the F.P.C.C.I.; that respondent No.3's order dismissing respondent No.5's appeal against the F.P.C.C.I.'s letter dated 31.10.2019 did not suffer from any legal infirmity; and that respondent No.1 erred by not appreciating that the petitioner's initial nomination by respondent No.6 for the membership of the E.C. of the F.P.C.C.I. was strictly in accordance with the law. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned order dated 25.11.2019 passed by respondent No.1 to be set aside.

8. On the other hand, learned counsel for respondents No.5 and 6 submitted that no advantage could have been gained by the petitioner from the votes cast through e.mails; that after the passing of the impugned order dated 25.11.2019, the E.C. of respondent No.6 by majority nominated respondent No.5 for the membership of the E.C. of the F.P.C.C.I.; that the meeting of the E.C. of respondent No.6 was attended by thirteen out of the eighteen members was held on 27.11.2019; that in the said meeting, secret balloting for the nomination of the member of the E.C. of the F.P.C.C.I. took place; that since ten out of the thirteen members had voted in favour of respondent No.5, the latter's nomination for the membership of the E.C. of the F.P.C.C.I. was just and valid; that if the impugned order dated 25.11.2019 is set aside, it would have the effect on the petitioner's name being sent as respondent No.6's nominee, and this would result respondent No.5 who had got the majority votes as a nominee to be deprived from membership of the E.C. of the F.P.C.C.I.; and that the petitioner's nomination had not been signed by the Chairman of respondent No.6, whereas respondent No.5's nomination has

been signed by the Chairman as well as the Secretary General of respondent No.6. Learned counsel for respondents No.5 and 6 prayed for the writ petition to be dismissed.

9. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

10. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 6 above, and need not be recapitulated.

11. The election conducted on 27.11.2019 by the members of respondent No.6's E.C. for nominating a representative for the membership of the E.C. of the F.P.C.C.I. is a crucial event after the passing of the impugned order dated 25.11.2019 and has an important bearing on the instant petition. The petitioner has himself pleaded in the writ petition that respondent No.1 had clarified that voting through proxy or post was not permissible for nominating a representative by respondent No.6 for the said purpose. It is also an admitted position that the petitioner's nomination sent by respondent No.6's Secretary General to the F.P.C.C.I. had not been signed by the Chairman of respondent No.6. Had the petitioner won the election against respondent No.5 for nomination as a member of the E.C. of the F.P.C.C.I., it does not appeal to reason as to why he was unable to win the election held on 27.11.2019. Since the position taken by respondents No.5 and 6 is consistent (that respondent No.5 is the lawful nominee of respondent No.6 for membership of the E.C. of the F.P.C.C.I.), the petitioner cannot be thrust or imposed on respondent No.6 as its nominee or representative before the F.P.C.C.I.

12. It may also be mentioned that while sending up the nominations for the membership of the General Body and E.C. of the F.P.C.C.I., on 16.10.2019, the nomination of the E.C. of the F.P.C.C.I. was left blank by respondent No.6. The resolution dated 16.10.2019 was signed by the Chairman as well as the Secretary General of respondent No.6. The reason given for not sending up the name of respondent No.6's nominee for membership of the E.C. of the F.P.C.C.I. was that clarification was being sought from

respondent No.1. As mentioned above, the petitioner has pleaded that respondent No.1 had clarified that voting through proxy and postal votes was not permissible. This clarification is said to have been issued by respondent No.1 on 23.11.2019. Before this clarification was sent, the Secretary General of respondent No.6, acting alone, on 16.10.2019, sent the petitioner's name as respondent No.6's nominee for membership of E.C. of the F.P.C.C.I. This letter was not signed by the Chairman of respondent No.6. Therefore, no premium could be gained by the petitioner on the basis of the said letter dated 16.10.2019.

13. In view of the above, I do not find any merit in this petition, which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

Qamar Khan*

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