



GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF TRADE ORGANISATIONS
MINISTRY OF COMMERCE & TEXTILE INDUSTRY
State Life Building No. 7, 2nd Floor,
Blue Area, Islamabad



Immediate

F. No. 9(15)/2013-TO

Islamabad, the January 10, 2014

ORDER IN ORIGINAL NO. 01/2014

Passed by Mr. Muhammad Usman Qureshi, Director of Trade Organizations

Mr. Naseem Akhtar Mehmood Chaudhry, M/s Pearltec Pakistan, Ltd.

Versus

Election Commission, Pakistan Overseas Employment Promoters Association

Present in the hearing on 8-01-2014:

1. Mr. Naseem Akhtar Mehmood Chaudhry, M/s Pearltec Pakistan, Ltd.
2. Mr. Muhammad Aqeel Awan, M/s Islamic Manpower Promoters.
3. Mr. Fida Ahmad, Secretary General, Pakistan Overseas Employment Promoters Association
4. Mr. Abid Hussain Abbasi, Member, Election Commission, Pakistan Overseas Employment Promoters Association.

Place of Hearing:

**OFFICE OF DIRECTOR OF TRADE ORGANIZATIONS
DIRECTORATE GENERAL OF TRADE ORGANIZATIONS,
STATE LIFE BUILDING NO. 7, 2ND FLOOR, BLUE AREA,
ISLAMABAD.**

Date of issuance of Order: **10-01-2014**

ORDER:-

By this order the undersigned intends to dispose of the appeal dated 21.11.2013 filed by Mr. Naseem Akhtar Mehmood Chaudhry of M/s Pearltec Pakistan, Ltd., against rejection of his nomination papers and acceptance of nomination papers of Mr. Muhammad Aqeel Awan of M/s Islamic Manpower Promoters for the election of Chairman of Pakistan Overseas Employment Promoters Association for 2013-14 election by the Election Commission of Pakistan Overseas Employment Promoters Association, (herein after referred to as "the Association").

2. Facts of the case are that Mr. Naseem Akhtar Mehmood Chaudhry, a corporate member of the Association approached the office of DGTO vide letter No.PPL/DGTO dated 3.07.2013 with the request to direct the Association to elect its Chairman from the corporate class as required under law in the 2013-14 election. The office of the DGTO vide its letter No. 18(28) /2008-TO dated 22-07-2013 advised the Association to adhere to sub-rules (9) & (10) of rule 21 of Trade Organizations Rules, 2013, for election of Chairman of the Association.

3. Thereafter, Mr. Naseem Akhtar Mehmood Chaudhry, filed a complaint dated 15.09.2013 before the DGTO alleging that it was the turn of the corporate member to be elected as the Chairman of the Association in accordance with provisions of Trade Organizations Rules, 2013, and the Election Commission of the Association would announce its result in favour of Mr. Muhammad Aqeel Awan in violation of law. He further stated that the Election Commission was bound to scrutinize the nomination papers by 15.09.2013 but it has failed to do so, which reflects its malafide intentions.

4. As the polling for election of office bearers was scheduled on 17.09.2013, it was deemed necessary to stop the election process till the resolution of complaint of Mr. Naseem Akhtar Mehmood Chaudhry, which was communicated vide letter No. 7(10/2013-TO dated 16.09.2013. The Election Commission of the Association in its decision dated 16.09.2013 also rejected the nomination papers of Mr. Naseem Akhtar Mehmood Chaudhry on the grounds that his seconder, Mr. Sarfraz Zahoor Cheema was

not eligible to second the nomination of any candidate of office bearer of the Association for 2013-14 election, as the seconder was a retiring member and would not be part of the Central Executive Committee of 2013-14. However, Election Commission of the Association accepted the nomination of Mr. Muhammad Aqeel Awan, an associate member, for standing in election for the Chairman of the Association.

5. Mr. Rizwan-ul-Haq, Deputy Director vide order No. 17/2013 dated 4.10.2013 inter-alia declared the decision of Election Commission of the Association to reject the nomination papers of Mr. Naseem Akhtar Mehmood Chaudhry as void and illegal ab initio and directed the Election Commission to accept his nomination papers for Chairman of the Association.

6. The order of Mr. Rizwan-ul-Haq was challenged by Mr. Muhammad Aqeel Awan in a writ petition No. 3980/2013 before the honorable Islamabad High Court, Islamabad. The honorable Islamabad High Court in its order dated 1.11.2013 set aside the impugned order of Mr. Rizwan-ul-Haq. Para 2 of the order of Islamabad High Court, Islamabad reads as follows:

“ In view of the matter, the impugned order is set aside. If any appeal against the acceptance of nomination paper of Petitioner is filed, same shall be entrusted to any other officer of above or equal rank by the Secretary, Ministry of Commerce as Mr. Rizwan-ul-Haq, Deputy Director has already been disclosed his mind. The newly appointed officer shall issue notice to both the parties before passing any final order. Till then election process shall remain suspended.”

7. Consequently, Mr. Naseem Akhtar Mehmood Chaudhry filed an appeal dated 21.11.2013 before Secretary Commerce against the acceptance of nomination papers of Mr. Muhammad Aqeel Awan and rejection of his nomination papers. In compliance with the order of the honorable Islamabad High Court, Islamabad, Secretary Commerce nominated the undersigned to hear the case and decide in accordance with law and rules.

8. Subsequently, a hearing was held on 8.01.2014 in the office of the undersigned to decide the case. Mr. Naseem Akhtar Mehmood Chaudhry, Mr. Muhammad Aqeel Awan, Mr. Fida Ahmad, Secretary General of the Association and Mr. Abid Hussain Abbasi, Member, Election Commission of the Association attended the hearing.

9. At the outset, Mr. Muhammad Aqeel Awan objected to the hearing of the appeal of Mr. Naseem Akhtar Mehmood Chaudhry, as in his opinion the subject appeal was not entertainable on the ground that it was filed after the order of the honorable Islamabad High Court, Islamabad and only an appeal filed before date of issuance of the order of honorable Islamabad High Court, Islamabad could be entertained. His objection was not accepted as the order of the honorable Islamabad High Court, Islamabad, allows hearing of any appeal that is filed after the issuance of its order. After rejection of his objection, Mr. Muhammad Aqeel Awan stated that he would continue to participate in the hearing but under protest.

10. Thereafter, Mr. Naseem Akhtar Mehmood Chaudhry pointed out that under sub-rule 9 of rule 21 of Trade Organizations Rules, 2013, the office of Chairman of an association has to be rotated between the associate members and the corporate members, whereas, during the last three years the office of Chairman of the Association has been held by associate members. Therefore, it is the turn of a corporate member to be elected as Chairman of the Association and hence acceptance of nomination papers of Mr. Muhammad Aqeel Awan by the Election Commission is against law. Sub-rule 9 of rule 21 of Trade Organizations Rules, 2013 reads as under:

“(9) In any trade organization where the general body comprises at least fifty per cent members from associate class, there shall be rotation of office of president and, as the case may be, the chairman between the associate and corporate members:

Provided that in case of a chamber of small traders and an association of small traders there shall be no such restriction.”

11. The contention of Mr. Naseem Akhtar Mehmood Chaudhry that previous three Chairmen of the Association were from the associate class was accepted by the other three participants. Mr. Muhammad Aqeel Awan, however, pointed out that the Association was an association of small traders and hence under the proviso of sub-rule

9 of rule 21 of Trade Organizations Rules, 2013, it was exempt from rotation of its Chairman between the associate class and corporate class.

12. Thereafter, Mr. Naseem Akhtar Mehmood Chaudhry pointed that his nomination papers were illegally rejected by the Election Commission as both his proposer and seconder were members of the Executive Committee. Mr. Muhammad Aqeel Awan and Mr. Abid Hussain Abbasi, Member, Election Commission responded that seconder of Mr. Naseem Akhtar Mehmood Chaudhry was a retiring member of Executive Committee and hence not eligible to second the nomination paper of any candidate of office bearer of the Association. Therefore, they were of the view that rejection of nomination papers of Mr. Naseem Akhtar Mehmood Chaudhry is according to law.

13. Then Mr. Muhammad Aqeel Awan also raised another objection which was not raised earlier by him before the Election Commission against the eligibility of Mr. Naseem Akhtar Mehmood Chaudhry. He pointed out that Mr. Naseem Akhtar Mehmood Chaudhry was elected as a member of the Executive Committee in 2011 and his tenure was to expire on 30.09.2013 but he resigned on 7.07.2012 to ensure that the remaining period of his tenure would count as one year mandatory break as required under sub-rule 11 of rule 20 of Trade Organizations Rules, 2013. He further pointed out that as the tenure of Mr. Naseem Akhtar Mehmood Chaudhry was to expire on 30.9.2013 and despite his resignation, he is not eligible to become member of Executive Committee for 2013-14 under sub-rule 11 of rule 20 of Trade Organizations Rules, 2013.

14. After hearing the parties at length, perusing the record, documentary evidence and relevant provisions of laws and rules, the undersigned is of the view that:

- i. The licence granted to Pakistan Overseas Employment Promoters Association is for an 'association' and not as an 'association of small traders'. Hence, the Association is bound to rotate its office of Chairman between associate members and corporate members in accordance with sub-rule 9 of rule 21 of Trade Organizations Rules, 2013. The proviso of sub-rule 9 of rule 21 of Trade Organizations Rules, 2013 is not applicable to the Association;

- ii. The Association has violated the rights of its corporate members by electing its Chairmen for the last three years from the associate class;
- iii. Acceptance of nomination papers of Mr. Muhammad Aqeel Awan, an associate member, for the Chairman of the Association despite objections raised against his candidature by Mr. Naseem Akhtar Mehmood Chaudhry and clear directions given by office of DGTO in its letter No. 18(28) /2008-TO dated 22-07-2013 to observe sub-rules (9) & (10) of Trade Organization Rules, 2013, is unlawful and reflects the malafide intentions of the Election Commission of the Association. Malafide is apparent in the decision of Election Commission dated 16.09.2013. While rejecting the objections of Mr. Naseem Akhtar Mehmood Chaudhry against Mr. Muhammad Aqeel Awan the Election Commission observed that “the objection of Mr. Naseem Akhtar Mehmood Chaudhry regarding implementation of Rule 21(9) & (10) of Trade Organizations Rules, 2013, it is decided that it will be completely observed at the time of Election of Office Bearers which is scheduled on 17-9-2013. By keeping his request that for the year 2013-14 is turn of Central Chairman of Corporate Class, this Election Commission shall give first chance to candidate from corporate class to present himself as a candidate of Central Chairman from Corporate Class and should obtain confidence of present members of central Executive Committee with simple majority. In case candidate from Corporate Class fails to gain confidence of members of Central Executive Committee, then candidate from Associate Class will be given as second chance to gain the confidence of Members of CEC with simple majority of present Members of Central Executive Committee of 2013-14. Therefore, the nomination papers of Mr. Muhammad Aqeel Awan are being ACCEPTED to contest the Election Central Chairman for year 2013-14”. The ruling of the Election Commission shows that it was aware that it was the turn of a corporate member to become chairman of the Association and an associate member was not eligible to contest the election of Chairman, but it still accepted the nomination papers of Mr. Aqeel Awan, as associate member of the Association, in violation of sub-rule 9 of rule 21 of Trade Organizations Rules, 2013. Furthermore, the Election Commission violated rules 18 and 19

of Trade Organizations Rules, 2013, by deciding that Chairman of the Association would be selected through a two stage process with the corporate member given the first right to gain the confidence of the majority of members of the Executive Committee and in case of his failure to do so, the associate member would be given the opportunity to gain the confidence of majority of members of Executive Committee. Election procedure and conduct of elections has to be carried out according to rules 18 and 19 of Trade Organizations Rules, 2013 and there is no provision in law that supports the procedure outlined by Election Commission for election of Chairman of the Association ;

- iv. The rejection of nomination papers of Mr. Naseem Akhtar Mehmood Chaudhry by the Election Commission on the grounds that his seconder is a retiring member of the Executive Committee of the Association is not in accordance with law. Sub-rule 16 of rule 18 of Trade Organizations Rules, 2013 stipulates that any person elected as member of the Executive Committee shall send his nomination papers proposed and seconded by an elected member of the Executive Committee to the Election Commission and it does not stipulate that the proposer and seconder be a newly elected member of the Executive Committee. The seconder of Mr. Naseem Akhtar Mehmood Chaudhry was Mr. Sarfraz Zahoor Cheema who was a bona-fide member of the Executive Committee at the time he seconded the name of Mr. Naseem Akhtar Mehmood Chaudhry for Chairman of the Association and thus authorized to second the name of any elected member of the Executive Committee for standing in election of office bearers of the Association; and
- v. Sub-rule 15 of rule 21 of Trade Organizations Rules, 2013 stipulates that on completion of term, office bearers and members of Executive Committee shall not be eligible to contest election or co-option in any representative capacity in the trade organization for the next one year. By resigning as member of Executive Committee on 7.7.2012 Mr. Naseem Akhtar Mehmood Chaudhry has not remained a member of Executive Committee of the Association for more than one year. Furthermore, by resigning on 07.07.2012 Mr. Naseem Akhtar Mehmood Chaudhry did not complete his term. Hence the eligibility Mr.

Naseem Akhtar Mehmood Chaudhry is not adversely affected by sub-rule 15 of rule 21 of Trade Organizations Rules, 2013. The position taken by Mr. Muhammad Aqeel Awan that sub-rule 11 of rule 20 of Trade Organizations Rules, 2013, bars Mr. Naseem Akhtar Mehmood Chaudhry from standing in election for Chairman of the Association is not valid as rule 20 of Trade Organizations Rules, 2013, only applies to Federation of Pakistan Chambers of Commerce and Industry and not to other trade organizations.

15. In view of the foregoing facts and reasons the following decisions are hereby made:

- i. Acceptance of nomination papers of Mr. Muhammad Aqeel Awan by the Election Commission for the Central Chairman of the Association is unlawful and void ab initio. Election Commission of the Association is directed to remove the name of Mr. Muhammad Aqeel Awan from the list of candidates for the Central Chairman of the Association for 2013-14 election;
- ii. Rejection of nomination papers of Mr. Naseem Akhtar Mehmood Chaudhry by the Election Commission for the Central Chairman of the Association is not in accordance with law. The Election Commission of the Association is directed to accept the nomination papers of Mr. Naseem Akhtar Mehmood Chaudhry for the Central Chairman of the Association for 2013-14 election; and
- iii. Election Commission of the Association is directed to resume and continue the electoral process of the Association for 2013-14 election.

(**Muhammad Usman Qureshi**)
Director (TO)

Announced Dated:- 10 -01-2014.